

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA		DOCKET 4:20-CR-318
VS.		SEPTEMBER 28, 2022
		9:03 A.M.
KEITH TODD ASHLEY		SHERMAN, TEXAS

VOLUME 3 OF 8, PAGES 540 THROUGH 822

REPORTER'S TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE AMOS L. MAZZANT, III,
UNITED STATES DISTRICT JUDGE, AND A JURY

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1 (Open court, defendant present, jury present.)

2 THE COURT: Please be seated.

3 Welcome back, ladies and gentlemen. I hope you
4 had a good evening.

5 And let me ask the government for their next
6 witness.

7 MS. RATTAN: Your Honor, the United States calls
8 John McClellan.

9 THE COURT: Sir, if you'll raise your right hand
10 and be sworn in.

11 (The oath is administered to the witness.)

12 THE COURT: Okay. Go ahead and proceed.

13 DIRECT EXAMINATION OF JOHN ALEXANDER McCLELLAN, II
14 CALLED ON BEHALF OF THE GOVERNMENT

15 BY MS. RATTAN:

16 Q. Please state your name.

17 A. John Alexander McClellan, II.

18 Q. The acoustics in here are bad and it may be awkward,
19 but we need you to speak directly into the microphone as
20 much as you can.

21 A. Sure. Is that better?

22 Q. Much better, thank you.

23 State your name, please.

24 A. John Alexander McClellan, II.

25 Q. Will you spell your first and last -- well, John,

1 J-O-H-N?

2 A. Yes.

3 Q. Okay. And your last name?

4 A. McClellan, M-C-C-L-E-L-L-A-N.

5 Q. Mr. McClellan, can you tell the jury where you work?

6 A. I work at Parkland Securities in Ann Arbor, Michigan.

7 Q. And what is Parkland Securities?

8 A. Parkland is an investment firm, so a broker dealer that
9 offers securities to investing clients.

10 Q. And will you tell us what your background, your
11 education and training is that qualify you for your
12 position there at Parkland?

13 A. Yes. I have a degree in finance from Western Michigan
14 University. I passed several examinations in our industry,
15 known as a Series 7, Series 24, Series 53. And I have the
16 certified regulatory compliance professional designation.
17 It is a three-year program with Wharton Business School and
18 FINRA.

19 And I started -- I've been at Parkland since 2002
20 when it started, and I became chief compliance officer in
21 2007.

22 Q. And you said that you have different series of
23 licenses. What is a series? What does that mean?

24 A. Those are examinations offered by our regulator to
25 allow people to either offer securities, different

1 securities products, or to supervise people who do offer
2 those securities products.

3 Q. And as chief compliance officer, what does that mean?
4 What do you do?

5 A. So I oversee the firm from a rules and regulations
6 standpoint. I have a team of employees who are compliance
7 officers who try to ensure that our financial advisors all
8 sell securities to the investing public and do it
9 accordingly to rulings and regulations.

10 Q. Follow the rules.

11 A. Correct.

12 Q. Let's go back to where you work, Parkland Securities,
13 and let's talk about what the investment products are.

14 What does Parkland Securities do?

15 A. Parkland Securities offers a wide range of investments,
16 so similar to other bigger firms that people might have
17 heard of like Morgan Stanley or Merrill Lynch or Raymond
18 James. But generally mutual funds, annuities, stocks,
19 bonds are the main products that we offer.

20 Q. Has there been a product that Parkland Securities
21 offered that was called the SmartTrust UIT?

22 A. Yes.

23 Q. What was that?

24 A. A UIT is a unit investment trust. It's a type of
25 investment similar to a mutual fund that is a basket of

1 securities that tracks an index.

2 Q. Let me talk to you about the name Keith Ashley.

3 Are you familiar with the name Keith Ashley?

4 A. Yes.

5 Q. And are you familiar with Keith Ashley and his
6 relationship with Parkland Securities?

7 A. Yes.

8 Q. Will you describe that for the jury?

9 A. Mr. Ashley was one of our financial advisors with
10 Parkland.

11 Q. When you say a "financial advisor," what do you mean by
12 that?

13 A. So he was an independent contractor with Parkland, and
14 he was licensed to offer securities to his clients through
15 Parkland.

16 Q. How do you become an independent contractor with
17 Parkland? What would he have had to do?

18 A. He would have had to have passed a FINRA examination
19 like I mentioned, a Series 6 or a Series 7 exam, and then
20 apply for application with Parkland Securities.

21 Q. And did he do that?

22 A. Yes.

23 Q. What licensure did he have?

24 A. The Series 6.

25 Q. And around when was it that he became a licensed

1 agent/broker with Parkland Securities?

2 A. In 2002.

3 Q. Now, Keith Ashley is a licensed broker with Parkland
4 Securities, and that would be in 2018, 2019, 2020, all the
5 way from 2002; is that right?

6 A. Correct.

7 Q. And at some point during that time period, one of the
8 products that Parkland Securities sold was a
9 SmartTrust UIT; is that right?

10 A. That's right, yes.

11 Q. Would there have been paperwork associated with the
12 SmartTrust UIT explaining what it was?

13 A. Yes.

14 Q. And would the brokers, Keith Ashley, have been able to
15 show a client that paperwork?

16 A. Yes.

17 Q. And that could be used to solicit an investment; is
18 that right?

19 A. Correct.

20 Q. Can a broker ever guarantee or promise a rate of return
21 to an investor?

22 A. No.

23 Q. Explain that to us. Why not?

24 A. One of the tenets, one of the main rules of our
25 industry is that you can never promise a client a

1 guaranteed rate of return. The stock market, as I think
2 most people know, is very volatile, or it can be volatile
3 and so investments that we offer are subject to risk and,
4 therefore, we can't offer a guarantee on a return.

5 Q. Now, if a client gives money to a broker, gives money
6 to one of your independent contractors, how should the flow
7 of money work if it's a legitimate transaction?

8 A. So if a transaction is consummated -- so if an
9 investment is sold to a client, the client would write a
10 check payable to a qualified custodian, so like -- we use
11 National Financial Services, so they write the check
12 payable to National Financial Services.

13 Q. So the check should say "Pay to the order of National
14 Financial Services"?

15 A. Correct.

16 Q. Because that's the trust account that Parkland
17 Securities uses; is that right?

18 A. Yes.

19 Q. Now, would a licensed broker with Parkland who is
20 marketing any of your products, a SmartTrust UIT, ever --
21 should a licensed broker ever accept money and put it into
22 their personal account, their business account, anything
23 like that?

24 A. No.

25 Q. The only place that the money should go would be to

1 Parkland Securities' trust account?

2 A. The only place would be -- yeah. So a check can't even
3 be made payable to Parkland. It needs to be made payable
4 to the custodian, which is National Financial.

5 Q. Now we're talking about a check. What about a wire
6 transfer? How would that work?

7 A. The same way. A wire could only be made -- the
8 recipient could only be National Financial.

9 Q. Okay. So if a client is investing money and it's
10 someone that Keith Ashley has solicited, should it go to
11 "Pay to the order of KBKK"?

12 A. No.

13 Q. Is that even an account that you recognize?

14 A. No.

15 Q. So no money should be going to KBKK?

16 A. Correct.

17 Q. Well, let me ask you about alternative investments.
18 What is that?

19 A. Alternative investments are generally known as a more
20 risky investment. They're generally a liquid and it's for
21 high-risk customers, offered by financial advisors with a
22 Series 7 license and there is generally higher requirements
23 for customers to have before they can buy them.

24 Q. Was your broker, Keith Ashley, authorized to even sell
25 alternative investments?

1 A. No.

2 Q. Explain that to us.

3 A. So Mr. Ashley had the Series 6 license, which is not
4 appropriate for that type of investment. You would need a
5 Series 7 license to offer an alternative investment.

6 Q. Now, what about communication between your brokers and
7 the potential clients or the clients? What sort of
8 interaction do you expect?

9 Are your brokers permitted to text with potential
10 clients or clients?

11 A. No.

12 Q. And explain that to the jury. Why should they not be
13 texting?

14 A. So we have a requirement as an investment firm that we
15 monitor and retain all electronic communications with our
16 advisors and their clients. And so we do allow email
17 because we're able to monitor and capture and retain email,
18 but text messages were not a permissible communication
19 method for that reason.

20 Q. So the money, whether it's a check or a wire or cash,
21 should always go to National Financial Services?

22 A. Yes.

23 Q. A legitimate broker should never be texting with a
24 client or a potential client?

25 A. Correct.

1 MS. RATTAN: I'll pass the witness, your Honor.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION OF JOHN ALEXANDER McCLELLAN, II

4 BY MR. SANDEL:

5 Q. Mr. McClellan, how are you? Good morning.

6 A. Good morning.

7 Q. My name is Ryne Sandel, and I represent Keith Ashley in
8 this case.

9 You just spoke with Ms. Rattan about Mr. Ashley;
10 and I believe you said he was an independent contractor,
11 correct?

12 A. Correct.

13 Q. Do you know how many independent contractors Parkland
14 currently employs?

15 A. Roughly 350.

16 Q. Okay. And are those independent contractors all within
17 the state of Texas, or are they kind of all over?

18 A. They're nationwide.

19 Q. Nationwide.

20 And where is Parkland centrally located? Are they
21 a Texas corporation, or are they located somewhere else?

22 A. Our main office is Ann Arbor, Michigan.

23 Q. Okay. Now, when somebody becomes an independent
24 contractor for Parkland, you said that there are certain
25 steps that they have to take, correct?

1 A. Yes.

2 Q. And once they have passed their exams and they have
3 submitted their application and they become an independent
4 contractor, does Parkland register their information in a
5 database?

6 A. Yes.

7 Q. And the information that Parkland registers, is one of
8 those data points the independent contractor's address?

9 A. Yes.

10 Q. So where they are located?

11 A. Yes.

12 Q. And would it be uncommon for that address to be their
13 home address if they operate out of their home?

14 A. That's not uncommon.

15 Q. Another point of data that you would register is the
16 phone number of that independent contractor; is that
17 correct?

18 A. Yes.

19 Q. Now, you said that Parkland is required to keep a log
20 of all emails between a financial advisor and their
21 clients, correct?

22 A. Yes, correct.

23 Q. Now, I want to talk to you about, I guess, how that
24 happens. Does Parkland provide them with a specific email
25 address, or does the contractor give you this is the email

1 address that I use?

2 A. Good question. A combination.

3 So we provide an email address. However, if the
4 registered representative has an email address that they
5 wish to use and they own that email address, we're able to
6 register that on our servers and still capture it according
7 to rules.

8 Q. Okay. So if we see emails between Keith Ashley and his
9 clients and it doesn't necessarily say it's coming from
10 Parkland.com, that wouldn't be uncommon, correct?

11 A. That's correct.

12 Q. Because that would have been an email address that was
13 registered with you that you're still able to capture that
14 information?

15 A. Correct.

16 Q. As you sit here today, do you know what email address
17 Mr. Ashley had registered with Parkland Securities?

18 A. I believe it was northtexasmoney.com.

19 Q. Okay. Now, you talked a little bit about financial
20 advisors promising rates of return. Do you recall those
21 questions?

22 A. Yes.

23 Q. Now, my understanding is your testimony says that they
24 are not allowed to guarantee a rate of return.

25 Is that true?

1 A. That's true.

2 Q. But are financial advisors allowed to give their
3 clients an estimate of the types of returns they could
4 expect?

5 A. With qualifications, yes.

6 Q. Okay. What sort of qualifications are you referring to
7 there?

8 A. Generally that rates of return are subject to change
9 and based on fluctuations of the stock market, you know,
10 but certain investment types have different -- you could
11 estimate a rate of return based on that.

12 Q. And in terms of kind of these certain investment types,
13 it's fair to say that there are certain investments which
14 are more aggressive, right, and certain investments that
15 are more conservative?

16 Is that a fair way to state that?

17 A. That is fair, yes.

18 Q. And so maybe on a more aggressive investment, it might
19 have a wider range or a wider estimate of what the return
20 might look like; is that fair?

21 A. It is, yes.

22 Q. And then the -- a conservative estimate would be a
23 narrower range; is that fair?

24 A. Generally, yeah.

25 Q. Okay. Now, you talked about the SmartTrust UIT; and I

1 believe you said that's similar to a mutual fund? Is that
2 what you --

3 A. That's probably the closest type of investment, yes.

4 Q. Now, would that be considered -- the UIT, would that be
5 considered a more aggressive or a more conservative type of
6 investment?

7 A. Somewhere in the middle.

8 Q. Somewhere in the middle.

9 So it's not a highly aggressive investment, but
10 it's not a very-little-to-no-risk investment; is that fair?

11 A. That's correct.

12 Q. Okay. Now, with the SmartTrust UIT that Parkland
13 offered, you said that there was paperwork that contractors
14 could give to their clients to kind of explain to them what
15 the investment is, right?

16 A. Yes.

17 Q. Is them giving that paperwork to the client a
18 requirement, or is it just -- is that a tool that financial
19 advisors have if they want to give the person some more
20 information?

21 A. The latter. It's a tool.

22 Q. So they're not required to give that paperwork. They
23 can, instead, just have a conversation with their client
24 and explain what it is, correct?

25 A. Correct.

1 Q. Now, if a client decides, hey, I want to invest in this
2 SmartTrust UIT, you said that they would make a check or a
3 wire or money order and that would get paid to National
4 Financial Services?

5 A. Yes.

6 Q. Is there additional paperwork that's required that
7 would get sent to Parkland to say this client now owns this
8 UIT?

9 A. So with those types of investments, you can also just
10 buy them in a brokerage account; so there may not be
11 required paperwork for that.

12 Q. Okay. So if a client were to have told Keith Ashley,
13 "Hey, I want to invest in this UIT," other than him saying
14 that and sending the money, there may not have been any
15 additional paperwork that was required?

16 A. Correct.

17 Q. We talked about the email capturing and registering an
18 email with Parkland.

19 Is that a requirement of somebody being an
20 independent contractor with Parkland? You have to agree to
21 that?

22 A. Can you rephrase the question?

23 Q. Sure.

24 We talked earlier about your independent
25 contractors can register an email through Parkland. You

1 remember us talking about that, correct?

2 A. Yes.

3 Q. And that that is so Parkland can log all of the emails
4 that are sent from that account, correct?

5 A. Correct.

6 Q. Now, is that a requirement that Parkland has with all
7 of their independent contractors where the independent
8 contractors have to sign something saying we agree that all
9 of our communications will be through email through this
10 account?

11 A. Yes.

12 Q. Okay. And is that something that exists on a form
13 somewhere that Keith Ashley would have signed?

14 A. It would have been an attestation, yes.

15 Q. An attestation, okay.

16 And that would have been part of his initial
17 application through Parkland, correct?

18 A. Potentially. You're going back 20 years. I don't know
19 if it was in then or not.

20 But we have an annual attestation as well where
21 advisors attest every year that they use their compliant
22 email address.

23 Q. Okay.

24 MR. SANDEL: Pass the witness, your Honor.

25 THE COURT: Anything additional?

1 MS. RATTAN: No, your Honor.

2 THE COURT: Can this witness be fully excused?

3 MS. RATTAN: Yes, please.

4 MR. SANDEL: Yes, your Honor.

5 THE COURT: You are free to leave. Thank you,
6 sir.

7 Okay. What's next?

8 MS. RATTAN: Special Agent Jason Rennie.

9 THE COURT: Agent, if you'll raise your right hand
10 to be sworn in.

11 (The oath is administered to the witness.)

12 THE COURT: Go ahead and proceed.

13 DIRECT EXAMINATION OF JASON RENNIE

14 CALLED ON BEHALF OF THE GOVERNMENT

15 BY MS. RATTAN:

16 Q. Please state your name.

17 A. Jason Rennie.

18 Q. And will you spell your name, please.

19 A. It's J-A-S-O-N R-E-N-N-I-E.

20 Q. Where do you work?

21 A. I'm a special agent with the FBI.

22 Q. And will you tell the jury what your background is that
23 qualifies you to be a special agent with the FBI?

24 A. I obtained a degree in information systems from The
25 University of Texas at Dallas; and I attended a 21-week

1 course in Quantico, Virginia, which is the FBI Academy.

2 And I've been an FBI agent now for 18 years.

3 Q. And can you give the jury an overview of your various
4 assignments within the FBI over the 18 years?

5 A. Sure.

6 I graduated from Quantico in 2005, went to
7 Chicago, worked organized crime.

8 I transferred actually to Sherman, Texas. I spent
9 about a year and a half in Sherman, Texas, where I worked
10 bank robberies, kidnappings, white-collar crime, violent
11 crime.

12 And then I transferred to a white-collar crime
13 squad in Frisco where I work Ponzi schemes, securities
14 fraud, general white-collar crime matters.

15 Q. And then that's where you are assigned now; is that
16 right?

17 A. I am.

18 Q. And you're the lead agent on this case, *United States*
19 *versus Keith Todd Ashley*?

20 A. I am.

21 Q. Let me direct your attention -- yesterday when the
22 representative was testifying from the Branch Banking and
23 Trust bank, an issue came up about the bank having
24 previously been Citibank; is that right?

25 A. Yes.

1 Q. And on cross-examination there was a question about
2 whether the wires were actually linked to Keith Ashley's
3 account because the account number on the wires was
4 different from the original signature card; is that right?

5 A. I recall.

6 Q. Have you researched that, and can you explain that to
7 the jury?

8 A. Sure.

9 When the -- when the account was originally
10 opened, it was a Citibank account --

11 MR. WHALEN: Objection. It calls for hearsay,
12 your Honor. It's based on hearsay documents that he may or
13 may not -- he may have reviewed from BB&T.

14 THE COURT: Okay. Sustained.

15 MS. RATTAN: We'll offer Government's Exhibits 8A
16 and 8B -- I believe 8B is already in evidence. We'll offer
17 Government's Exhibit 8A.

18 THE COURT: Any objection to 8A? 8B is already
19 admitted.

20 (Off-the-record discussion among counsel.)

21 MR. WHALEN: Can we approach, your Honor, just
22 briefly?

23 THE COURT: Yes.

24 (Sidebar conference, off the record.)

25 THE COURT: So I will go ahead and conditionally

1 admit Exhibit 8A subject to some redactions we'll take care
2 of later.

3 Go ahead and proceed.

4 MS. RATTAN: Thank you, your Honor.

5 BY MS. RATTAN:

6 Q. So, Agent Rennie, did you review Government's
7 Exhibit 8A and determine whether, in fact, the account
8 changed account numbers so that the Citi card that we saw
9 with Keith Ashley's name and account number on it was
10 linked to the wires that were displayed before the jury?

11 A. I did.

12 Q. And will you explain to the jury what it showed?

13 A. Sure.

14 Simply, when the account was opened, it was opened
15 under a Citibank name and an account number. And then my
16 understanding is in the acquisition by BB&T, the
17 transferral of the Citibank assets and Citibank
18 documentation into BB&T documentation, that the account
19 number changed.

20 Q. So it was the same account. It was Keith Ashley's
21 account with BB&T?

22 A. Yes. Actually, the closing balance of the Citibank,
23 the last Citibank statement, became the opening balance of
24 the new account number.

25 MS. RATTAN: And if we can publish Government's

1 Exhibit 8B, which was previously admitted; and it's the
2 original signature card for the Citibank.

3 BY MS. RATTAN:

4 Q. And this is page 1. So this is the Citibank card that
5 the jury previously saw with the Branch Banking and Trust
6 witness yesterday; is that right?

7 A. Correct.

8 Q. And it indicates that the business is KBKK and it's
9 Keith Ashley; is that right?

10 A. Correct.

11 Q. And this is going to be as of 2013.

12 A. Correct.

13 Q. But you reviewed it to assure the jury that this
14 account became the same account with BB&T?

15 A. Correct.

16 MS. RATTAN: And then let's look at page 2 of
17 Government's Exhibit 8B.

18 BY MS. RATTAN:

19 Q. And again this is the signature card for Citibank and
20 then became the signature card for BB&T bank.

21 And let's look at this right here.

22 A. That's Mr. Ashley's former home address, 1211 Boerne
23 Court, Lucas, Texas, 75002. The residence is located in
24 the Eastern District of Texas.

25 Q. And you say his former address. Did he move? Explain

1 that to us.

2 A. He did. I believe in 2020, late 2020, he moved to
3 another residence, which is in Allen, Texas, which is also
4 in the Eastern District of Texas.

5 Q. And then all of his business addresses that he would
6 list on various documents, were those located in the
7 Eastern District of Texas?

8 A. Correct. As far back as documents -- earliest
9 documents that we had, Mr. Ashley had an address in
10 Princeton, Texas; had an address in McKinney, Texas; had
11 multiple P.O. Boxes in Allen, Texas; had the 9 Prestige
12 Circle in Allen, Texas; had the 1211 Boerne Court address;
13 and then his current address which is in Allen, all of
14 which are in the Eastern District of Texas.

15 Q. Now let's shift subjects here and talk about the
16 victims in the case. Yesterday the jury heard from three
17 of the victims who gave money to Keith Ashley, KBKK.

18 Have you reviewed the records as they relate to
19 the victims in the case, Denny Willmon, Leonid Shteyngart,
20 and James Seegan?

21 A. I have.

22 Q. And based on those financial records and financial
23 analysis, have you been able to determine the loss amounts
24 for those victims?

25 A. I have.

1 Q. And can you explain those to the jury, if we can first
2 focus on Mr. Denny Willmon.

3 A. Right. Mr. Willmon, I believe he expressed --

4 MR. WHALEN: Your Honor, I'm going to object to
5 predicate and qualifications to give this opinion.

6 MS. RATTAN: May I be heard?

7 THE COURT: Yes.

8 MS. RATTAN: I think the witness just laid them
9 and explained that he'd reviewed the records and conducted
10 a financial analysis.

11 Clearly, the witness has a background with the
12 FBI, 18 years' experience doing white-collar investigations
13 included in that experience; and he's qualified to evaluate
14 the records.

15 THE COURT: Overruled.

16 BY MS. RATTAN:

17 Q. Focusing now on Denny Willmon, can you give us an
18 overview of that?

19 A. Mr. Willmon -- I believe he testified in this Court
20 that he gave in excess of \$150,000 to Mr. Ashley during the
21 scheme. I reviewed multiple checks, to include a \$20,000
22 check; \$25,000 check; as well as an earlier \$100,000 check
23 which was provided to KBKK in 2017. I don't have the
24 Indictment in front of me; but the total loss to
25 Mr. Willmon was between a hundred and twenty-five and

1 \$175,000.

2 Q. Okay. And that was just for Mr. Willmon?

3 A. Correct.

4 Q. Now let's look at the records as they relate to
5 Mr. Willmon.

6 MS. RATTAN: If we can look at Government's
7 Exhibit Number 47.

8 BY MS. RATTAN:

9 Q. This is one of the records that was previously
10 presented to the jury by CPA/Forensic Accountant Matt
11 Wylie; is that right?

12 A. That's correct.

13 Q. And you just mentioned \$20,000 as an example that went
14 to KBKK?

15 A. That's correct.

16 Q. And this is an amount that you included in your
17 conclusion about the loss amount?

18 A. Right.

19 Q. And then, of course, we see that the \$562 went back to
20 Mr. Willmon.

21 But let me direct your attention to this right
22 here, the \$7,075 that went from KBKK at the Branch Banking
23 and Trust account to Keith or Brandi Ashley at Bank of
24 America. Can you talk to us about these transactions right
25 here?

1 A. Sure. After the testimony, to ensure there was no
2 confusion by the jury, I reviewed the time frame of 3-14-19
3 through 4-2 of '19 to see the outgoing transfers money sent
4 to 4804 to include wire transfers during that time frame.

5 Included in that amount is a \$2,500 wire transfer
6 that Mr. Ashley sent to himself during that time frame.

7 Q. Okay. And so the time frame is this right here, the
8 time frame from which the check was deposited until all of
9 the money -- all of the \$20,000 was gone?

10 A. Correct.

11 MS. RATTAN: And if we can publish Government's
12 Exhibit 8B.

13 Oh, let me get Exhibit 45B, rather.

14 BY MS. RATTAN:

15 Q. If you can explain what this is.

16 A. Sure. As I referenced, during the time frame of -- the
17 time frame it took for Mr. Willmon's \$20,000 to be
18 completed, one of the -- one of the transfers out of the
19 KBKK 8725 account to 4804 was this wire transfer. So it's
20 included in the \$7,000 figure that's located on the chart
21 that we just showed.

22 Q. Okay. So there's the \$2,500, the wire, right there.

23 And there is the date of the wire.

24 And then it's going from KBKK into another Keith
25 Ashley account; is that right?

1 A. Correct.

2 MS. RATTAN: So if we can go back to Government's
3 Exhibit 47.

4 BY MS. RATTAN:

5 Q. That wire is included in this amount right here, and
6 it's going from a Keith Ashley account to another Keith
7 Ashley account; is that right?

8 A. Correct.

9 Q. And it's part of Mr. Willmon's money, the \$20,000?

10 A. That's correct.

11 Q. And we know that the balance at the very beginning was
12 only \$238?

13 A. Correct.

14 Q. Now going back to Mr. Willmon's loss amounts, let me
15 direct your attention to Government's Exhibit 8A.

16 MS. RATTAN: And if we can look at 180. 8A, 180.

17 BY MS. RATTAN:

18 Q. Can you explain what this is?

19 A. Sure. This is a -- looks like the second page of a
20 bank statement. I can't see the date. It would probably
21 be the page up.

22 But suffice to say the \$2,500 wire transfer that
23 we just saw from 8725 to 4804 is referenced on the line
24 there next to the yellow. 3-25, that is the line item
25 notation on the bank statement that corresponds to the wire

1 transfer, which also corresponds to the \$7,000 on the chart
2 which we showed previously.

3 Q. Okay.

4 MS. RATTAN: And then if we can look at 8A, 256.

5 BY MS. RATTAN:

6 Q. What is this?

7 A. At the very bottom there, there is a 10-26. This, I
8 believe, is a 2017 -- October 2017 bank statement for KBKK
9 8725.

10 As I referenced previously, I reviewed
11 documentation which includes a \$100,000 deposit made by
12 Mr. Ashley pursuant to a check presented to him by
13 Mr. Willmon. That 10-26 entry on the bank statement is the
14 deposit of the \$100,000 provided by Mr. Willmon to
15 Mr. Ashley.

16 Q. So this is part of Mr. Willmon's money?

17 A. It's part of his investment, correct.

18 Q. And part of what you've calculated as being his loss?

19 A. Correct.

20 Q. Now let's focus on Leonid Shteyngart. Can you give us
21 an overview of the loss related to him?

22 A. Sure.

23 Mr. Shteyngart, he was also an investor with
24 Mr. Ashley. His -- I can't -- his -- I can't pinpoint his
25 exact loss amount right now. I'm trying to think of the

1 checks that I've seen from Mr. Shteyngart.

2 I believe Mr. Wylie testified to his estimated
3 loss amount, but I don't have it on the tip of my tongue at
4 this time.

5 Q. Okay. Let me direct your attention to the effect of
6 fraud on a financial institution.

7 A. Sure.

8 Q. Can you talk to us about that?

9 MR. WHALEN: Your Honor, I'm going to object.
10 This calls for a legal conclusion. It's outside the scope
11 of his expertise.

12 MS. RATTAN: I think the agent, based on the
13 background and experience that he's described for the
14 Court, can render an opinion about the effect that fraud,
15 especially since that's what he's investigated and been
16 involved with the FBI for 18 years -- what effect fraud can
17 have on financial institutions and certainly the civil and
18 criminal liabilities that these financial institutions can
19 face.

20 THE COURT: Overruled.

21 MR. WHALEN: Your Honor, I'm going to further my
22 objection that --

23 THE COURT: Your mic is not on --

24 MR. WHALEN: -- BB&T and the best witness to do
25 that would be BB&T and not this agent.

1 THE COURT: Overruled. Go ahead.

2 BY MS. RATTAN:

3 Q. Can you talk to us about the effect that this type of
4 crime, this type of fraud has on financial institutions?

5 A. It's significant.

6 MR. WHALEN: Your Honor, I'm going to object to
7 the form of the question. That's not the legal standard.

8 THE COURT: Overruled.

9 A. The effect on banks is significant.

10 Codified in law, there's Bank Secrecy Act
11 regulations that banks must follow. They must have robust
12 money laundering compliance, know your customer,
13 monitoring, surveillance, programs that are in place to
14 detect anything from terrorist financing to illegal money
15 transfer businesses, to investment fraud schemes.

16 The most -- the best example I can give you is in
17 2014 JPMorgan Chase was indicted by the --

18 MR. WHALEN: Object to the narrative and the
19 relevance, your Honor.

20 THE COURT: Sustained. If you want to ask another
21 question.

22 BY MS. RATTAN:

23 Q. Can you talk to us about possible criminal liability
24 that these financial institutions would have based on
25 criminal acts?

1 A. Sure. Liability would be they would face criminal or
2 civil penalties for not following the law, which is the
3 bank secrecy act.

4 I can give an example if that's necessary, but
5 fair to say that the banks are -- they're not obligated;
6 they're required by law to know their customer, monitor
7 anything that's going on within or through their bank, and
8 take actions to notify law enforcement, notify regulators
9 if they detect that.

10 And the effect it has on the bank is the bank's --

11 MR. WHALEN: Object to the narrative and to the
12 legal conclusion.

13 THE COURT: Sustained. Just ask another question.

14 MS. RATTAN: Yes, your Honor.

15 BY MS. RATTAN:

16 Q. What is the effect that it could have on a bank?

17 A. The effect that it has on the bank, it costs the
18 bank -- I would -- I'm guessing but hundreds of millions of
19 dollars a year to employ these people, the systems that are
20 required.

21 In addition, if they don't do things like --

22 MR. WHALEN: Objection to the narrative.

23 THE COURT: Sustained.

24 BY MS. RATTAN:

25 Q. Along with employing and using devices to detect fraud,

1 what else could banks be required or do?

2 A. Banks could -- if they are found in violation of the
3 law, they could face severe civil or criminal penalties.

4 Q. And focusing specifically on investment fraud and wire
5 fraud, that type of fraud, could the banks be liable for
6 the amount of money that the victims lost?

7 A. Of course. So --

8 Q. And as -- go ahead.

9 A. No. They could be liable for the amount the victims
10 lost if they are found to be in noncompliance with the
11 regulations that they -- that they operate under, such as
12 JPMorgan Chase in 2014.

13 MR. WHALEN: Your Honor, I'm going to object to
14 relevance and the narrative.

15 THE COURT: Sustained.

16 BY MS. RATTAN:

17 Q. Can you give us an example of what you're talking
18 about?

19 A. Sure. In 2014 JPMorgan Chase was indicted --

20 MR. WHALEN: Objection to the relevance, your
21 Honor.

22 THE COURT: Sustained.

23 BY MS. RATTAN:

24 Q. Well, let me direct your attention to the banks that
25 were involved in this case. There were multiple banks; is

1 that right?

2 A. There were.

3 Q. And we've talked about and seen testimony from a
4 representative from Branch Banking and Trust bank where the
5 defendant had one of his accounts, the KBKK account; is
6 that right?

7 A. That's correct.

8 Q. Is that bank FDIC-insured?

9 A. It is.

10 Q. And what is FDIC, and what does it mean to be
11 FDIC-insured?

12 A. FDIC is a regulatory body for the banking industry that
13 insures federal deposits up to \$250,000. If they are
14 considered a financial institution, for the most part, in
15 the United States, they are FDIC-insured, which gives
16 customers a level of comfort about their money and if their
17 money -- if the bank fails, the U.S. Government is backing
18 deposits to a certain amount. And it also has some legal
19 ramifications as they are financial institutions. So the
20 FDIC has regulatory authority over the banks.

21 Q. And then have you reviewed Government's Exhibits 20,
22 21, 22, and 23?

23 Are those the certificates that indicate that the
24 banks involved in this case are FDIC insured?

25 A. They do.

1 MS. RATTAN: Your Honor, we'll offer Government's
2 Exhibits 20, 21, 22, and 23.

3 MR. WHALEN: No objection, your Honor.

4 THE COURT: Okay. These exhibits will be
5 admitted.

6 MS. RATTAN: May we publish Government's
7 Exhibit 20, your Honor?

8 THE COURT: Yes, you may.

9 BY MS. RATTAN:

10 Q. Let me direct your attention to Government's
11 Exhibit 20, page 5.

12 Can you explain what this is?

13 A. Sure. This is an FD -- what they refer to as an FDIC
14 certificate. This is from the Federal Deposit Insurance
15 Corporation which ensures that as of the date there, May
16 the 27th of 1995, that that Branch Banking and Trust
17 company is an FDIC-insured bank.

18 Q. Okay. And then let me direct your attention to
19 Government's Exhibit 21.

20 MS. RATTAN: And if we can look at page 5.

21 A. Sure. This is the same certificate but this time for
22 Bank of America, which is just saying as of July 23rd of
23 1999 Bank of America and all of its branches are FDIC
24 insured.

25 MS. RATTAN: And if we can look at Government's

1 Exhibit 47.

2 BY MS. RATTAN:

3 Q. So again this is the flow of money that Mr. Willmon
4 provided; and again it's just an example of the \$20,000
5 that he provided.

6 And we're talking about the banks, and here we
7 have Branch Banking and Trust and the moneys going to Bank
8 of America. Are both of these banks FDIC-insured?

9 A. They are.

10 Q. Now let me direct your attention to Government's
11 Exhibit 22.

12 MS. RATTAN: If we can look at page 5.

13 BY MS. RATTAN:

14 Q. What bank is this for?

15 A. This is an FDIC certificate for Texas Capital Bank. It
16 just ensures that as of December 18th of 1998 that the bank
17 and its branches are FDIC-insured.

18 Q. And that's Texas Capital Bank.

19 Did one of the victims in this case have an
20 account at Texas Capital Bank?

21 A. Yes.

22 Q. And who was that?

23 A. The deceased, James Seegan.

24 Q. So Mr. Seegan's account was at Texas Capital Bank?

25 A. He did have an account there, yes.

1 Q. And then, finally, let me direct your attention in
2 terms of FDIC-insured to Government's Exhibit 23, page 5.

3 And what is this?

4 A. It's an FDIC certificate for JPMorgan Chase Bank; and
5 it just ensures that as of November 13th, 2004, JPMorgan
6 Chase and all of its branches were FDIC-insured -- or are
7 currently and were FDIC-insured.

8 Q. Now let me change the subject again and talk to you
9 about the wire transfers that took place between the
10 victims in this case and the defendant, Keith Ashley.

11 You're familiar with the wires?

12 A. I am.

13 Q. And they've been presented through testimony to the
14 jury; is that right?

15 A. They have.

16 Q. Let me ask you about the wire transfer which was
17 \$150,000 from James Seegan to the defendant, Keith Ashley.

18 Are you familiar with that transfer?

19 A. I am.

20 MS. RATTAN: May I approach the witness, your
21 Honor?

22 THE COURT: Yes, you may.

23 BY MS. RATTAN:

24 Q. Okay. I'm holding up a chart, and this is Government's
25 Exhibit Number 55; is that right?

1 A. I can't see the sticker there.

2 Q. Oh, sorry. It's right there.

3 A. I'll take your word for it.

4 Q. Okay. And what is this?

5 A. It's a wire transfer manifest.

6 Q. And what's happening here?

7 A. It's just indicating that there is a wire transfer that
8 was sent from an originator to a beneficiary, sometimes
9 through a correspondent bank but this one is from bank to
10 bank.

11 Q. And it's from James Seegan's bank account, \$150,000;
12 and then it goes to KBKK at Branch Banking and Trust?

13 A. That's exactly right. And it went from Texas Capital
14 Bank to Mr. Ashley's account, BB&T, to the business -- or
15 to the account named KBKK, LLC.

16 Q. Okay. And then both of these banks we just saw on the
17 certificates are FDIC-insured?

18 A. We did.

19 MS. RATTAN: May I return, your Honor?

20 THE COURT: Yes, you may.

21 MS. RATTAN: And then if we can look at
22 Government's Exhibit 56A.

23 BY MS. RATTAN:

24 Q. What is this?

25 A. This is a flowchart related to the \$150,000 that we

1 just referenced on the exhibit. It just shows the flow of
2 the investment money provided by Mr. Seegan to Mr. Ashley
3 via KBKK, LLC.

4 The date of the wire was May 5th of 2016, and this
5 chart essentially shows -- details the depletion of the
6 investment funds between the dates of May 5th of 2016 to
7 September 13th of 2016.

8 Q. And then the next wire -- and we've already talked
9 about this in your testimony this morning -- would be the
10 Denny Willmon wire, the \$2,500 wire that was sent.

11 And you've testified about that this morning; is
12 that right?

13 A. That's correct.

14 Q. And that would be, the Denny Willmon wire, Government's
15 Exhibit 47.

16 And, again, that was the wire that was encompassed
17 in the \$7,000 that went from KBKK to Bank of America; is
18 that right?

19 A. That's correct.

20 Q. And the third wire I want to direct your attention to
21 is the \$75,000 wire that was sent by Robert Greening.

22 And that was sent on February 6th of 2020; is that
23 right?

24 A. Correct.

25 Q. And can you tell us what happened there?

1 A. Mr. Greening, I believe, testified in this Court. He
2 provided, pursuant to an understanding that he was
3 investing in a SmartTrust UIT through Mr. Ashley --

4 MR. WHALEN: Your Honor, I'm going to object to
5 the cumulative testimony.

6 THE COURT: Overruled.

7 MS. RATTAN: If we can publish Government's
8 Exhibit 52A.

9 BY MS. RATTAN:

10 Q. We're talking about the \$75,000. And this was a wire
11 that Mr. Greening sent; is that right?

12 A. Correct.

13 Q. And what happened here?

14 A. It shows that on 2-6 of '20, Mr. Greening wire
15 transferred \$75,000 from his North Dallas Bank & Trust
16 account to KBKK, LLC, account at Branch Banking and Trust
17 ending in 8725 controlled by the defendant, Keith Ashley.

18 And it shows essentially, as I stated before, the
19 75,000 that Mr. Greening understood was being invested in a
20 SmartTrust UIT was actually -- according to this chart and
21 the investigation and the evidence in this case, that it
22 was depleted on personal items, personal debts. And on
23 this occasion it did not go -- it does not appear to be
24 utilized to pay other investors.

25 Q. And it was depleted in, it looks like, about 13 days;

1 is that right?

2 A. That's correct.

3 Q. And that's an overview, but let me ask you about the
4 wires. We know that this was a wire that went into the
5 account. Were there additional wires that the defendant,
6 Keith Ashley, used after the \$75,000 came into his account?

7 A. There are.

8 MS. RATTAN: If we can publish Government's
9 Exhibit 52B.

10 BY MS. RATTAN:

11 Q. What is this?

12 A. It's a wire transfer that was provided by BB&T bank.

13 Q. And it's for \$16,496; is that right?

14 A. Correct.

15 Q. And what's going on here?

16 A. It's a wire transfer from KBKK, LLC, at BB&T to a --
17 what I know to be North Texas Money Management-Keith
18 Ashley, the account ending in 2589 at JPMorgan Chase Bank.

19 Q. And it's the day after Mr. Greening wires the \$75,000;
20 is that right?

21 A. That's correct.

22 Q. February 7th of 2020.

23 And then let me direct your attention to
24 Government's Exhibit 52C.

25 MS. RATTAN: If we can publish that.

1 BY MS. RATTAN:

2 Q. What's going on here?

3 A. Sure. It's a wire transfer from KB -- on 2-10,
4 February 10th of '20, in the amount of \$12,000 from KBKK,
5 LLC, BB&T account ending in 8725 to North Texas Money
6 Management-Keith Ashley's account at JPMorgan Chase ending
7 in 2589.

8 Q. So again it's Robert Greening's money going in, and
9 then the date of this one is February 10th of 2020. So
10 four to five days after Mr. Greening's money goes in, Keith
11 Ashley transfers the money from himself to himself; is that
12 right?

13 A. Correct.

14 Q. Now let me direct your attention to Government's
15 Exhibit 52D.

16 Can you explain this to us?

17 A. Sure.

18 It's a February 12th, 2020, wire transfer of
19 \$13,500, again from KBKK, LLC, BB&T account ending in 8725
20 to North Texas Money Management-Keith Ashley's account at
21 JPMorgan Chase Bank ending in 2589.

22 Q. So again it's Keith Ashley transferring Robert
23 Greening's money from his account to another Keith Ashley
24 account?

25 A. Correct.

1 Q. And the amount of money involved here is \$13,500?

2 A. Correct.

3 Q. And that's within six days, approximately, of

4 Mr. Greening's wire going into Keith Ashley's KBKK account?

5 A. Correct.

6 Q. And then each one of these wires that we've reviewed --

7 the \$150,000; the \$20,000; the \$75,000; and then these

8 three that we've just reviewed, Government's Exhibits 52 B,

9 C, and D -- were those interstate wire transfers?

10 A. They were.

11 Q. So let's shift gears again and talk about a Ponzi or a

12 pyramid scheme. We've talked to Matt Wylie about it; and

13 he's, of course, a CPA.

14 But you've investigated fraud schemes and Ponzi

15 schemes; is that right?

16 A. I have.

17 Q. Can you give the jury an overview of Ponzi schemes,

18 fraud schemes? What are you looking for as an FBI agent?

19 MR. WHALEN: Objection as to relevance, your

20 Honor.

21 THE COURT: Overruled.

22 A. A Ponzi scheme essentially, in its purest form, is

23 paying old investors with new investor money. But it

24 requires a few things. It requires a constant influx of

25 money so that -- therefore, the new investors -- in order

1 to satisfy the old investors.

2 Ponzi schemes can be very simple. If the
3 investors that are investing in the purported scheme are
4 not requiring payouts that are immediate, they may have
5 less investors in the scheme.

6 The reason is is if, say, you give me your money
7 and I say, "Well, I can't pay you back for three years,"
8 you give me a large sum of money, if I'm the Ponzi schemer,
9 I can use your money the way I wish. I can use it on a
10 lavish lifestyle. I can use it to pay my kid's private
11 school tuition. And the window or the horizon to make
12 payments to satisfy you is longer.

13 There's other Ponzi schemes where --

14 MR. WHALEN: Objection as to the narrative, your
15 Honor.

16 THE COURT: Okay. Sustained.

17 BY MS. RATTAN:

18 Q. And what other types of Ponzi schemes or hallmarks do
19 you see in those schemes?

20 A. No real investment, again paying old investors with new
21 investor money, paying current investors with their own
22 money.

23 And Ponzi schemes really end two ways, either
24 there is not enough money to keep the scheme going or
25 there's a large amount of investors that ask for their

1 money back.

2 Q. And then it comes to light?

3 A. Then it comes to light.

4 Q. Let me direct your attention to Government's
5 Exhibit 44B.

6 MS. RATTAN: If we can publish that.

7 BY MS. RATTAN:

8 Q. This is Mr. Leonid's money, the \$20,000 that he put in
9 and invested with the defendant, Keith Ashley.

10 One of the things that you're looking for in the
11 pyramid or Ponzi scheme, you said, is the payment of old
12 investors.

13 So what's happening here?

14 A. Sure. Just as I was stating, in this example the
15 balance of 286.75 is not adequate to make -- it's not
16 adequate to make any payment or transfer on that chart at
17 all. Every dollar amount you see there exceeds the balance
18 before the money came in. So immediately you can see that
19 anything that goes on, it's common sense that it's
20 Mr. Shteyngart's money.

21 In addition, there's two individuals on this chart
22 that are investors that are being paid with the money that
23 just funded the account. Mr. Seegan is being paid \$4,000;
24 and Mr. Shteyngart is being paid \$1,600, which is really
25 just turning -- even if you gave the max benefit of the

1 doubt, \$286, you subtract that, Mr. Shteyngart is
2 essentially getting approximately \$1,300 of his own money
3 back as soon as he gave it to Mr. Ashley.

4 Q. And are these hallmarks of Ponzi schemes that you've
5 investigated?

6 A. Correct.

7 And you have to couple this with the fact that
8 there is no investment --

9 MR. WHALEN: Objection to the narrative.

10 THE COURT: Overruled.

11 BY MS. RATTAN:

12 Q. What else would you consider?

13 A. Sure. You have to couple this with the fact that there
14 is no investment. If somebody says they're taking in an
15 investment, the money that they repay to the investor has
16 to be returns on the investment for which they invested in.
17 If there is no investment, there can be no returns.

18 So anything that's being paid to purported
19 investors that's not returns on investment, that's a --
20 that's a hallmark of fraud.

21 Q. So let me direct your attention -- this is Leonid
22 Shteyngart; and two of the payments there are going to
23 victims, himself and also James Seegan.

24 Now let me direct your attention to Government's
25 Exhibit 47, if we can look at Mr. Willmon's money and

1 evaluate it for a pyramid or a Ponzi scheme.

2 A. Sure. Again, it's, you know, second verse, same as the
3 first. Mr. Willmon is putting in \$20,000. The balance on
4 the account again doesn't satisfy any of the movement of
5 money besides one, the \$181 to a credit card payment.

6 But Mr. Willmon is receiving his own money back,
7 and then Mr. Seegan and Mr. Shteyngart are receiving money
8 that Mr. Willmon paid in.

9 And look at it from an investor. If you were
10 receiving payments from somebody, if you had known that you
11 were receiving payments that was provided by other
12 investors, would you remain in the investment, A, or, B, if
13 you were told that at the beginning, would you have
14 invested at all? And the answer, logically, is no.

15 Mr. Willmon is understanding that money is returns
16 on an investment that he intended to make, not a return of
17 his own money.

18 Q. And then that's the money, of course -- an example of
19 money that was provided by Denny Willmon.

20 Let me direct your attention to money that was
21 provided by James Seegan.

22 MS. RATTAN: If we can look at Government's
23 Exhibit 56A and publish that.

24 BY MS. RATTAN:

25 Q. And do you see hallmarks here of the scheme that you've

1 described?

2 A. Right. It's the same as the last chart. Again, the
3 opening balance and the daily balance on -- when you
4 evaluate bank accounts and bank statements -- and what we
5 do is with he schedule these to see the timing of the
6 movement of the money.

7 If you ever look at the bottom of your statement,
8 you'll see a daily balance. Well, what that does is that
9 tells you when money comes in and when money is going out.

10 When this money came in, the daily balance was
11 \$63.68. And if there is no other deposits, the only money
12 that's being moved here, if you look at all of those
13 transfers short \$63 -- essentially, as easy as I can
14 explain it is that is Mr. Ashley spending Mr. Seegan's
15 money. That's all that shows in a visual format, that all
16 of those expenditures are being used by money that has been
17 taken by Mr. Ashley under false and fraudulent pretenses.

18 MS. RATTAN: And now if we can focus on another
19 James Seegan investment and look at Government's
20 Exhibit 56B.

21 BY MS. RATTAN:

22 Q. Again, when you evaluate this for a Ponzi or pyramid
23 scheme, tell us what you, as a trained investigator/FBI
24 agent, see.

25 A. Sure. Again, there's two investors being paid. Albeit

1 the balance on this one is higher, if we -- if I looked at
2 this -- now, the CPA's method, first in/first out. But
3 given the way you would give the benefit of the doubt to
4 the individual who owns the account is just automatically
5 take away the \$30,000, okay? So if there is \$30,000 even,
6 you know, the lines on the left side -- whatever adds up to
7 30,000, just eliminate that. That depletes the account to
8 zero. Then everything else is Mr. Seegan's money.

9 It's still a significant that is -- you know,
10 essentially -- and that's another hallmark in Ponzi schemes
11 is a lot of times the individual, the defendants are
12 spending money like it's not theirs. That's because it
13 isn't theirs. So expenditures at casinos, expenditures on,
14 you know, tuition. A lot of times you'll see on these
15 cases payments on school loans --

16 MR. WHALEN: Objection as to relevance as to other
17 cases, your Honor.

18 THE COURT: Sustained.

19 BY MS. RATTAN:

20 Q. Well, and spending the money like it's not theirs, just
21 in this -- on this chart alone it looks like there's \$8,000
22 that goes to casinos; is that right?

23 A. That's correct.

24 Q. And then there is the money, the significant amount of
25 money that's going to the brewery as well?

1 A. That's correct.

2 Q. So with each victim, in each instance, did you evaluate
3 the money and the flow of the money to determine whether
4 the defendant was involved in a Ponzi scheme?

5 MR. WHALEN: Objection. Calls for a legal
6 conclusion.

7 THE COURT: Overruled.

8 A. Based upon the evidence in the case, the financials,
9 it's clear that an investment fraud was being -- had been
10 hatched by the defendant, that that had been running for
11 some time. And the evidence and the financial movement and
12 the payment of former investors -- or new investors and old
13 investors and the use of the funds is indicative of what we
14 would commonly -- what the common nomenclature is a Ponzi
15 scheme.

16 BY MS. RATTAN:

17 Q. Now let's focus on Keith Ashley and who he is. Did you
18 look into his background?

19 A. I did.

20 Q. And, in fact, does he have background and training as a
21 nurse?

22 A. He does. I believe he is a registered nurse.

23 Q. And background and training as a police officer?

24 A. He does.

25 MS. RATTAN: Your Honor, may we offer Government's

1 Exhibits 14A, 35, and 36?

2 THE COURT: Any objection?

3 MR. WHALEN: May we approach, your Honor?

4 THE COURT: Yes.

5 (Sidebar conference, off the record.)

6 THE COURT: I will conditionally admit Exhibit 14
7 and also conditionally admit Exhibit 35. I will fully
8 admit 36 and 37.

9 Go ahead and proceed, Ms. Rattan.

10 MS. RATTAN: Thank you, your Honor.

11 May we publish Government's Exhibit 35, page 10?

12 THE COURT: Yes, you may.

13 BY MS. RATTAN:

14 Q. Now, Government's Exhibit 35 are records relating to
15 the defendant's nursing career; is that right?

16 A. Correct.

17 Q. And if we can look -- I think we're on page 10. Does
18 this indicate that the defendant is, in fact, a nurse?

19 A. Right. It looks like an Affidavit of Graduation.

20 Looks like he completed an associate degree of
21 nursing and it looks to be dated at the bottom May 20th
22 of -- I actually don't see it at the bottom there, but the
23 seal is May 20th. It's dated at the bottom.

24 And actually I think maybe the graduation date is
25 crossed out by the yellow line there but, yes, that's an

1 Affidavit of Graduation according to the Board of Nurse
2 Examiners of Texas.

3 Q. Okay. So indicating that the defendant, in fact, is a
4 nurse; is that right?

5 A. Correct. It looks like he completed the requirements
6 in 2004.

7 MS. RATTAN: And then if we can look at
8 Government's Exhibit 35, page 17.

9 BY MS. RATTAN:

10 Q. What is this?

11 A. It's a work history for Mr. Ashley that was provided to
12 the Board of Nurse Examiners. It just shows he was a -- at
13 the current time when this was filled out, he worked at
14 North Texas Medical Center. He was a paramedic in the ER.

15 Prior to that, he worked for an ambulance service
16 where he was a paramedic; and then prior to that, it
17 appears he worked at Southwest Helicopters as a flight
18 paramedic.

19 Q. So this lists three different positions that he's had
20 within the health care/medical field; is that right?

21 A. Correct.

22 Q. And, of course, it's got his name on here, Keith Todd
23 Ashley; and it's work history with the Board of Nurse
24 Examiners?

25 A. Correct.

1 Q. And then let's focus on Government's Exhibit 14A.

2 If we can look at page 1, which is displayed, is
3 this the defendant -- Keith Ashley's application for
4 employment that lists what his employment history is?

5 A. Correct.

6 Q. And this was his application for employment with one of
7 his jobs, and that would be with City Hospital White Rock
8 in Dallas?

9 A. Correct.

10 Q. So he lists here this address. Are you familiar with
11 this address?

12 A. I am. That was his residence in Lucas, Texas, which is
13 in the Eastern District of Texas.

14 MS. RATTAN: And then if we can look at page 2 of
15 14A.

16 BY MS. RATTAN:

17 Q. It has his employment history, and what is his
18 employment history?

19 A. Looks like in 2004 to 2014 he worked for PHI, which is
20 a -- he was a flight paramedic on a helicopter.

21 And it looks like he was a representative of PHI
22 from '08 to 2015.

23 And then above that, it shows his certifications
24 related to his employment.

25 MS. RATTAN: And then if we can look at the next

1 page, 14A, page 3.

2 BY MS. RATTAN:

3 Q. More of his employment history. Does he list "NTMM,
4 Business Owner"? What is that?

5 A. I'd referenced that earlier. The JPMorgan Chase
6 account is in the name NTMM, which is North Texas Money
7 Management.

8 Q. Okay. And was that Keith Ashley?

9 A. It was.

10 Q. And then we've got the PHI here again. What is that?

11 A. That's the helicopter medivac company that -- for which
12 Mr. Ashley worked as a flight paramedic.

13 Q. And then down here it talks about AMR, critical care
14 flight paramedic; is that right?

15 A. That's correct.

16 Q. And then if we can go on -- and it's got the dates
17 listed, 1996 to 2000.

18 MS. RATTAN: And if we can look at page 4.

19 BY MS. RATTAN:

20 Q. Page 4, he's working AMR, emergency medical technician
21 and paramedic; worked full-time in an emergency response
22 setting in the city of Princeton and the city of Wylie; is
23 that right?

24 A. Correct.

25 Q. And then he lists other experience in the medical field

1 here, January of 1990 through 1996. What's going on here?

2 A. It looks like he was in the Navy Reserve as a hospital
3 corpsman from '90 to '96 in Dallas.

4 And then maybe concurrent with that, he was an
5 emergency medical technician in Dallas.

6 And, actually, I failed -- on the page before
7 this, I failed to indicate that there is a -- there is a
8 slot where he does indicate that he had become an RN; so he
9 was a flight paramedic/RN.

10 Q. Okay. And that's on 14A, page 3.

11 A. Right there, 2002 to 2004. Correct.

12 Q. That's the RN that you're talking about right there?

13 A. Correct.

14 MS. RATTAN: And then if we can go back to page 4,
15 14A page 4.

16 BY MS. RATTAN:

17 Q. And he lists what his licenses and certificates are.
18 What are those?

19 A. It looks like emergency medical technician licensure
20 certification, paramedic certificate, pre-hospital trauma
21 life support certificate, critical care certification,
22 instructor certification, registered nurse, Series 6,
23 Series 63, registered nurse, as well as he graduated in
24 2004 from the registered nursing program.

25 Q. So that is essentially an overview of his background

1 and employment as a health care professional; is that
2 right?

3 A. That's correct.

4 Q. Working in emergency settings, he's a registered nurse,
5 an RN, and has a number of years' experience and training?

6 A. Correct.

7 Q. So let me ask you about his police background. Did you
8 look at that?

9 A. I did.

10 MS. RATTAN: If we can publish Government's
11 Exhibit Number 36.

12 BY MS. RATTAN:

13 Q. This is page 1 of Government's Exhibit 36, and it's the
14 Texas Commission on Law Enforcement. What is that?

15 A. It's a regulatory agency that oversees police
16 departments, anybody who's a sworn law enforcement officer
17 in the state of Texas.

18 MS. RATTAN: And if we can look at page 3 of
19 Government's Exhibit 36.

20 BY MS. RATTAN:

21 Q. What is this?

22 A. This is the filing. I believe this was filed -- my
23 understanding is this was filed when he separated as a law
24 enforcement officer. But it still indicates Mr. Ashley's
25 information. At the time it looks like he was employed

1 with the Wylie Police Department in Wylie, Texas, which is
2 Collin County, which is within the Eastern District of
3 Texas.

4 Q. Okay. And we've got "Collin County," "Wylie Police
5 Department," and it's Keith Ashley?

6 A. Right. And it looks like the date of separation was
7 February 17th of 1998.

8 MS. RATTAN: And then if we can look at the next
9 page, Government's Exhibit 36, page 4.

10 And if we can page down, right here, Service
11 History.

12 BY MS. RATTAN:

13 Q. Does this explain his experience as a law enforcement
14 officer?

15 A. It does.

16 Q. And what is it?

17 A. Looks like he was with the Krugerville Police
18 Department on two occasions, in '95 and again '96-'97.

19 He was also with the fire department as a peace
20 officer for four months in McKinney, Texas.

21 And again with the Wylie Police Department for
22 approximately nine months from '97 to '98.

23 So it looks like he has approximately two years --
24 well, it says there "Total officer time" -- two years as a
25 law enforcement officer in North Texas.

1 MS. RATTAN: And then if we can page a little bit
2 down on the same page, I think there is a date that he
3 became inactive.

4 A. Yes. That -- for the peace officer license, it looks
5 like it was -- the license was inactive -- became inactive
6 in 2020.

7 BY MS. RATTAN:

8 Q. Okay. And then -- that's his nursing background and
9 also his law enforcement background.

10 You also looked at KBKK, and can you tell the
11 jury -- we've heard about the account KBKK at the Branch
12 Banking and Trust bank. Can you tell us what KBKK was?

13 A. It was formed by Mr. Ashley. And the investigation
14 shows -- my understanding is that K, B, K, and K is
15 actually the initials of Mr. Ashley and his family members.
16 I believe it's Keith, Brandi his wife, Kade and Kyler,
17 which are his children. So that's KBKK, LLC. That's what
18 the initials stand for.

19 Q. So he has the nursing background, the police background
20 and he's also involved in private business but he's also,
21 through Parkland Securities, offering products; is that
22 right?

23 A. Correct.

24 Q. So he's got multiple things going on. Is that fair to
25 say?

1 A. That's correct.

2 Q. And as part of your investigation, did you look at
3 where he lived and the house that he had?

4 A. I did.

5 MS. RATTAN: Your Honor, we'll offer Government's
6 Exhibit 109, page 1.

7 THE COURT: Any objection?

8 MR. WHALEN: No objection.

9 THE COURT: Okay. Government's Exhibit 109 will
10 be admitted.

11 MS. RATTAN: May we publish it?

12 THE COURT: Yes, you may.

13 BY MS. RATTAN:

14 Q. This is Government's Exhibit 109, page 1. Can you
15 explain to us what this is?

16 A. Mr. Ashley's residence in 1211 Boerne Court, Lucas,
17 Texas, which is within the Eastern District of Texas.

18 Q. And that's the address that we've seen on multiple
19 documents; is that right?

20 A. Correct. I think that was the address of record for
21 Parkland. That was the address of record for the bank
22 accounts. That was the address of record -- his license
23 came back to that, KBKK, LLC. So that was the center of
24 business activity.

25 Q. And not specifically but generally, when did he live

1 here?

2 A. I believe -- I believe he bought the house at Boerne
3 Court prior to 2010 is my understanding, maybe 2007; and
4 then I believe it was sold in late 2020.

5 Q. Late 2020?

6 A. Correct. He owned -- he owned it for a considerable
7 amount of time. The 2007 number might have been a little
8 bit earlier than that, but it was a considerable amount of
9 time.

10 Q. So that's an overview of Keith Ashley's background. Is
11 that fair to say?

12 A. Yes.

13 Q. Now let's switch gears again, and let me focus back on
14 James Seegan.

15 James Seegan was someone who had invested a
16 significant amount of money with Keith Ashley; is that
17 right?

18 A. He did.

19 Q. And yesterday we heard testimony about Mr. Seegan's
20 will and Mr. Seegan's trust; is that right?

21 A. Correct.

22 MS. RATTAN: If we can publish Government's
23 Exhibit 59.

24 BY MS. RATTAN:

25 Q. This was presented yesterday through the notary,

1 Ms. Molina, Alicia Molina, who notarized Mr. Seegan's will;
2 is that right?

3 A. That's correct.

4 Q. And it was done on April 8th of 2019?

5 MS. RATTAN: If we can look at Government's 59,
6 page 8.

7 BY MS. RATTAN:

8 Q. This is the will, and it was done April 8th of 2019.

9 MS. RATTAN: And if we can look at Government's
10 Exhibit 59, page 4.

11 BY MS. RATTAN:

12 Q. It talks about, right here, the powers of the executor
13 and the trustee. And what does it, just generally, say
14 about the powers of the trustee?

15 A. Says (as read): "Each Executor and Trustee" -- or "act
16 independently and free from the control of any court as to
17 my estate and as to every trust established under this Will
18 (and as to the property of my estate and all the property
19 of every trust created under this Will). Each Executor and
20 Trustee shall have and possess all powers and authorities
21 conferred by statute or common law in any jurisdiction in
22 which such Executor and Trustee may act, and include powers
23 and authorities conferred by the Texas Estates Code and
24 Texas Trust Code, and by any future amendments thereto,
25 except for any instance in which such powers and

1 authorities may conflict with the express provisions of
2 this Will, in which case the express provisions of this
3 Will shall control."

4 Q. Okay. So the trustee is going to act independently and
5 free from control; is that right?

6 A. That's correct.

7 Q. And let me direct your attention to Government's
8 Exhibit 59, page 3 at the top.

9 And it says the executor is going to be -- the
10 trustee is going to be who?

11 A. "I appoint my friend, Keith Ashley, to be Independent
12 Executor of my Will and estate and Trustee of all trusts
13 created by my Will."

14 Q. And then if we can -- that's the will. Now let's focus
15 on the trust, Government's Exhibit 60.

16 MS. RATTAN: If we can publish that.

17 BY MS. RATTAN:

18 Q. And is this a trust that was created on April 16th of
19 2019?

20 A. That's correct.

21 Q. And it's of James Seegan, one of Keith Ashley's
22 investment clients; is that right?

23 A. Correct.

24 Q. And does this, in fact, appoint Keith Ashley to be the
25 trustee?

1 A. It does.

2 MS. RATTAN: If we can look at page 5 of
3 Government's Exhibit 60, Article V. Page 5, Article V.

4 BY MS. RATTAN:

5 Q. It says Keith Ashley is going to be the trustee; is
6 that right?

7 A. Correct.

8 MS. RATTAN: May I approach the witness, your
9 Honor?

10 THE COURT: Yes.

11 BY MS. RATTAN:

12 Q. Now, we've just reviewed two documents, Government's
13 Exhibit 59 and 60, the will and trust. And do those
14 indicate that the defendant, Keith Ashley, became the
15 independent executor of James Seegan's will and trust?

16 A. They do.

17 Q. And that would be on April 8th of 2019 and April 16th
18 of 2019?

19 A. Correct.

20 MS. RATTAN: I'll pass the witness, your Honor.

21 THE COURT: Cross-examination?

22 Why don't we do this. Why don't we go ahead and
23 take our morning break, and then we'll do
24 cross-examination.

25 Ladies and gentlemen, again, please don't discuss

1 the case among yourself or anyone else. Don't do any
2 outside research. We'll take 15 minutes and then continue.
3 Thank you.

4 (The jury exits the courtroom, 10:26 a.m.)

5 THE COURT: Anything further from the government?

6 MS. RATTAN: No, your Honor.

7 THE COURT: Defense?

8 MR. WHALEN: No, your Honor.

9 THE COURT: Okay. See you back in 15.

10 (Recess, 10:26 a.m. to 10:44 a.m.)

11 (Open court, defendant present, jury present.)

12 THE COURT: Please be seated.

13 Mr. Whalen, cross-examination?

14 CROSS-EXAMINATION OF JASON RENNIE

15 BY MR. WHALEN:

16 Q. Agent Rennie, good morning.

17 A. Mr. Whalen, how are you, sir?

18 Q. I'm doing well. Good to see you.

19 A. Very good to see you again.

20 Q. All right. First of all, I just want to ask you a few
21 questions. You had talked about financial institutions and
22 things like that, correct?

23 A. Sure.

24 Q. Okay. Would you agree with me that the banking
25 industry is heavily regulated by Congress?

1 A. Yes.

2 Q. Okay. And so every time there's a new regulation,
3 Congress imposes that on banks; is that correct?

4 A. I think a bank is heavily regulated; and I think that
5 if Congress makes a decision and they push it down to the
6 banks, that affects the banks, yes.

7 Q. Okay. So if I'm a bank doing business in the United
8 States, that's the cost of doing business, correct?

9 A. Regulation -- I think to be a bank, I think the cost of
10 doing business is you have to abide by the regulations that
11 are set by the regulators.

12 Q. Okay. And you don't really have a choice in that,
13 correct?

14 A. I think if you want to be a financial institution in
15 the United States, you don't -- yeah, it's kind of a
16 take-it-or-leave-it.

17 Q. Okay. And it's kind of like when you talked about
18 money laundering, things like that, that if there is a --
19 if I deposit more than \$10,000 cash, that creates a
20 reporting requirement on the bank, correct?

21 A. The banks have requirements that -- that -- you know,
22 based upon BSA rules that they have to file. Without being
23 specific, yes, they have to file reports on certain things.

24 Q. So they have to file reports on bulk cash transactions,
25 correct?

1 A. Correct.

2 Q. And if they think something is suspicious, they are
3 required to file those reports and things like that?

4 A. Correct.

5 They are required to have monitoring and
6 surveillance programs which -- a lot of times it's
7 automated these days, but there are physical people that
8 sit and review what the -- what the systems deem
9 suspicious.

10 Q. Okay. And that's -- as they said, that's imposed on
11 them by Congress and the banking regulations?

12 A. Right. It's in law that they must have these programs
13 and abide by them.

14 Q. Okay. And if you know, as it relates to FDIC-insured,
15 are the requirements if I elect to be FDIC-insured, that
16 there's requirements as a bank I -- they have to fulfill?

17 A. I'm certain there are. I don't know what the exact
18 requirements are to meet FDIC.

19 I know what the insurance amounts are. Actually,
20 I think I stated earlier it was 250. It's actually -- I
21 think it's more than that now.

22 But regulations imposed by the FDIC, I wouldn't be
23 able to speak to that.

24 Q. Okay. But fair to say -- or is it logical to believe
25 that if you're going to be an insured, there's probably

1 rules that you've got to follow to maintain that
2 certificate?

3 A. I would agree with that.

4 Q. Okay. And then as far as part of your investigation as
5 far as BB&T or now Truist, how big of a bank is
6 BB&T/Truist, if you know?

7 A. I don't know how much they have under management, but
8 I'm certain that they are a fairly large bank. I don't
9 think they are as large as Chase, but they are a large
10 bank.

11 Q. Are we talking billions or trillions?

12 A. It would be speculating.

13 Q. Okay. And is that not -- that's something you haven't
14 looked into as part of your --

15 A. No. I don't know how large they are, but I will
16 concede that they are a large -- they are a large bank.

17 Q. Okay. Okay. Let's go to --

18 MR. WHALEN: If we can see Exhibit 47, please.

19 BY MR. WHALEN:

20 Q. Okay. In Exhibit 47 I think you testified that part of
21 the \$7,075 was a wire; is that correct?

22 A. Right. Part of the outgoing money from the account,
23 which included wires I believe on that month, were -- was
24 the \$2,500.

25 Q. Okay. And that \$2,500 was part of the \$20,000,

1 correct? Is that --

2 A. Right. Based upon the balance that is left in the
3 account, my understanding is the 20,000 came in and a
4 portion of that money shortly -- well, during the time
5 frame listed there, there was a wire transfer of \$2,500.

6 I believe it was March 25th of 2019.

7 Q. Okay. And that went to his personal bank account,
8 correct?

9 A. It went to -- right. In the name of Keith or Brandi
10 Ashley BoA ending in 4804.

11 Q. And if we look on the flow here, none of that \$2,500
12 that went into his personal account came back out to go to
13 either Mr. Seegan or Mr. Shteyngart, correct?

14 A. Right. It looks like -- it doesn't like there is
15 any -- the only outflow from the account looks like it's
16 for credit cards, a personal mortgage, and medical expenses
17 but nothing to the other investors from that account, that
18 particular account.

19 Q. Okay. And as far as it relates to Denny Willmon, is
20 this \$20,000 check the last check he wrote to KBKK?

21 A. I can't recall. He had a 20- and a \$25,000 check. I
22 can't sit here and say exactly which one was last. I
23 believe this one was last; but if you had a record to
24 refresh my recollection, I could probably give you a better
25 answer. But it was one of the two. It was either 20- or

1 25- was the last check he provided.

2 Q. Okay. And just so we're -- and they both were in the
3 form of a check, correct?

4 A. Right. I believe Mr. Willmon -- all of the money that
5 Mr. Willmon provided, my understanding is they were checks.

6 Q. Okay.

7 MR. WHALEN: If we can go to Exhibit 52A.

8 BY MR. WHALEN:

9 Q. Okay. This is the chart as relates to Mr. Greening's
10 75,000, correct?

11 A. Yes, sir.

12 Q. Okay. And I believe you testified that there was three
13 wires in this series of cash flow; is that correct?

14 A. Correct.

15 Q. Okay. I think you talked about the first wire was in
16 February -- February 7th of 2020; is that correct?

17 A. Was that a \$16,000 wire?

18 Q. Yeah, \$16,496.15.

19 A. Correct.

20 Q. Okay. That went to the Chase account; is that correct?

21 A. Correct.

22 Q. Okay. And is that part of the 41,996?

23 A. So if you add up the -- if you add up the amounts on
24 52B, C, and D, it actually adds up to \$41,996.15. That
25 number was rounded down to include the flow, 41,996.

1 Q. Okay. So when you talked about the three wires -- one
2 on February 7th, February 10th, and February 12th -- that
3 was all included in that 41,996, correct?

4 A. Correct.

5 Q. Okay. And that's going to Mr. Ashley, correct?

6 A. It's going to -- it went to Mr. Ashley; and then he
7 moved it to another account that he controls, North Texas
8 Money Management.

9 Q. Okay. And that money is included as part of the
10 \$75,000 that came from Mr. Greening, correct?

11 A. Right. Just based upon the fact that the balance was
12 so low, at least, if you're being deferential to
13 Mr. Ashley, all but \$2,600 would have to be Mr. Greening's
14 money.

15 Q. Okay. And then if we look at the money coming out of
16 that NTMM account, based on this flowchart, none of the
17 money in that went to any investors, correct?

18 A. Correct. None of the money -- based upon this chart,
19 none of the 41,996 that went into North Texas Money
20 Management appears to have gone to any other investors of
21 Mr. Ashley -- with Mr. Ashley.

22 Q. Okay. On the flowcharts, I think we heard testimony
23 that Mr. Wylie created these. Did you participate in the
24 creation of the flowcharts?

25 A. The creation of the chart itself, no, I did not.

1 Q. Okay. Did you participate in what went on the
2 flowcharts or the data? How did you participate in the --
3 if you didn't create the flowchart -- let me back up. Let
4 me start over.

5 You didn't physically personally create this
6 chart, correct?

7 A. I did not.

8 Q. Okay. Did you aid Mr. Wylie in creating it?

9 A. The way the relationship between the forensic CPA and
10 the agent are is we provide the bank records. The bank
11 records are scheduled. Then we receive a -- "scheduled"
12 means put them in an Excel spreadsheet, essentially.

13 And then we receive that, evaluate that based upon
14 the evidence and the narrative in the case. Then we have a
15 back-and-forth on, you know, show me where this money --
16 how it was spent.

17 And then the CPA is the expert on the finances.
18 So based upon what they see and based upon what they know
19 about the case, they create the charts.

20 Q. Okay. And what they know about the case is provided by
21 you, correct?

22 A. Well, I mean, they have access to the case file. They
23 are a participant in the case, so they have access to all
24 of the reports that are written. They have access to the
25 grand jury documents. Obviously they have access to the

1 financials. And on multiple occasions they participated in
2 meetings. We have meetings about the case so --

3 Q. So fair to say actively involved?

4 A. Yes, correct.

5 Q. Okay. You talked earlier about one of the FDIC
6 certificates for Texas Capital Bank; is that correct?

7 A. That's correct.

8 Q. Okay. Did you do some research into Texas Capital
9 Bank?

10 A. I know they are a bank that's based in Dallas, and --

11 Q. Okay.

12 A. -- I think their consumer division is possibly
13 BankDirect. They have a consumer division which is a
14 subsidiary of a larger bank.

15 But other than that, I think that's about what I
16 know besides what they were provided.

17 Q. Okay. So they are based in Dallas, correct?

18 A. They are based in Dallas; and I believe the FDIC
19 certificate said Dallas, yes.

20 Q. Okay. And did it have any branches that you know of?

21 A. Oh, I'm certain they do.

22 Q. Okay. Do they have any branches in the Eastern
23 District of Texas?

24 A. I'm not certain if they do or not. I know they have
25 one in Richardson. I'm not -- I can't speak to that.

1 Q. Okay. If they did, is that something you would
2 remember, would be important?

3 A. If I looked into where their branch locations were, I
4 would remember. But I know that they have -- I think they
5 are based downtown on McKinney.

6 Q. Okay.

7 A. And I know they have one in Richardson.

8 Q. Okay, in Dallas County. City of Dallas is -- well, not
9 all of the city of Dallas. But McKinney Avenue in Dallas,
10 Texas, is part of the Northern District of Texas, correct?

11 A. That would be the Northern District. As you know, the
12 Eastern District/Northern District line is fuzzy around
13 certain parts of the area. But, yes, on McKinney Avenue in
14 Dallas, Texas, is the Northern District.

15 Q. Okay.

16 MR. WHALEN: Okay. If we can go to Exhibit 59,
17 please.

18 BY MR. WHALEN:

19 Q. Okay. And we see there that the will was made in
20 Dallas County, Texas; is that correct?

21 A. Correct.

22 Q. Okay. And not to state the obvious; but that's in the
23 Northern District of Texas, correct?

24 A. Dallas County, I believe, yes, is entirely in the
25 Northern District.

1 Q. Okay. And just so there is not any confusion, there's
2 portions of the city of Dallas that sit in Denton County
3 and Collin County, correct?

4 A. Correct.

5 Q. Okay.

6 A. But those are -- those are -- but those portions of
7 Dallas are different counties, not Dallas County.

8 Q. Okay. So Dallas County is part of the Northern
9 District of Texas?

10 A. Correct.

11 Q. Okay. And your office, the FBI office in Dallas, is
12 part of the Northern District of Texas, correct?

13 A. Correct. And my office is in Frisco, Texas, which is
14 in Collin County, which is in the Eastern District of
15 Texas.

16 Q. Eastern District of Texas, okay.

17 MR. WHALEN: If we can go to page 2.

18 BY MR. WHALEN:

19 Q. Okay. And if we look at page 2, you see a section
20 called Contingent Beneficiaries; is that correct?

21 A. I do.

22 Q. Okay. You heard Mr. Cosenza testify yesterday; is that
23 correct?

24 A. I did.

25 Q. Okay. And the beneficiaries of this will are

1 Ms. Seegan who gets 40 percent, correct?

2 A. Correct. The contingent beneficiaries are Ms. Seegan,
3 correct.

4 Q. And his son, correct?

5 A. Correct.

6 Q. And Kerby Keller, his nephew, gets 20 percent, correct?

7 A. Correct.

8 Q. Okay.

9 MR. WHALEN: We can go to page 3.

10 BY MR. WHALEN:

11 Q. Okay. And he named Mr. Ashley; but he also named
12 Mr. Keller as a backup executor, correct, trustee?

13 A. That's correct.

14 Q. Okay.

15 MR. WHALEN: Can you zoom back out, please.

16 All right. We can go down to the bottom where it
17 says "Guardian Provisions."

18 BY MR. WHALEN:

19 Q. Correct? That he named Kerby Keller to be the guardian
20 of his son in case his wife predeceased him and then he
21 passed away; is that fair?

22 A. That's fair.

23 Q. Okay.

24 MR. WHALEN: We can go to page 4. Maybe we can
25 just look at the whole page.

1 BY MR. WHALEN:

2 Q. All right. And you were asked this question, and you
3 were asked to read Article VIII. And I think the question
4 was -- or stated that Mr. -- the executor or trustee would
5 be free from control. But it also says "of any court,"
6 correct?

7 A. As to any court, right.

8 Q. Okay. So -- and you heard Mr. Cosenza testify
9 yesterday that part of the way Wills are structured in the
10 state of Texas is the way you do them is to avoid probate,
11 correct?

12 A. I don't recall exactly what Mr. Cosenza said, but he
13 said that probate is involved when there is a will and a
14 trust.

15 Q. Okay. But it also says under these powers that the
16 person has to follow all the rules and regulations of the
17 Texas Estates Code and the Texas Trust Code, correct?

18 A. It does say that, correct.

19 Q. Okay.

20 MR. WHALEN: All right. If we can go to
21 Government's Exhibit 60, please.

22 BY MR. WHALEN:

23 Q. And you had a chance to review this, correct?

24 A. I did.

25 Q. Okay. And it also had the same distribution for

1 beneficiaries, correct?

2 A. That's my recollection, yes.

3 Q. Okay.

4 MR. WHALEN: We can go to page 2.

5 Let's go to page 3.

6 BY MR. WHALEN:

7 Q. All right. If we look at Article III, Beneficiaries,
8 once again consistent. Ms. Seegan 40 percent, his son
9 40 percent, and then Mr. Keller on the next page gets
10 20 percent, correct?

11 A. Correct.

12 Q. Okay. And once again, as far as the trustee section
13 goes, he named Mr. Ashley; but he also named Kerby Keller,
14 correct?

15 A. Do you have that section?

16 Q. Sure.

17 MR. WHALEN: Can you go to the next -- page 5. I
18 think it's on page 5.

19 BY MR. WHALEN:

20 Q. Okay. Trustee Appointments, do you see that?

21 Successor Trustee. It's Keith Ashley; and if he
22 fails to qualify or resigns, then it's Kerby Keller,
23 correct?

24 A. Correct.

25 Q. Okay. Now, in relation to that, you -- you weren't the

1 original case agent; but you took the case over, correct?

2 A. Correct.

3 Q. Okay. And you reviewed the file, your file, but as
4 well as did you review Carrollton PD's file?

5 A. I did.

6 Q. Okay. And would you -- did you learn through the
7 review of that file that at some point Mr. Ashley
8 resigned --

9 MS. RATTAN: Your Honor, I object. I think this
10 calls for hearsay, a hearsay response, based on the agent's
11 review of the file. We don't know what the answer is, but
12 it's a hearsay concern and I object.

13 THE COURT: Just rephrase the question.

14 BY MR. WHALEN:

15 Q. As part of your investigation, did you come to learn
16 that Mr. Ashley resigned as trustee?

17 MS. RATTAN: I object. It's a leading question.
18 That calls for --

19 MR. WHALEN: I get to lead on cross.

20 MS. RATTAN: He does, but it calls for -- oh,
21 pardon me. It calls for hearsay.

22 THE COURT: Well, overruled.

23 BY MR. WHALEN:

24 Q. Did you learn that he declined to continue to be his
25 trustee or executor of the will?

1 A. There were circumstances surrounding that, but at one
2 point Mr. Ashley did resign as the executor.

3 Q. Okay. And was that in February of 2020?

4 A. Late February of 2020, if I recall.

5 Q. Okay. Do you know -- I know I asked you about
6 Mr. Willmon. Was the last check Mr. Shteyngart sent in
7 December of 2019?

8 A. That would be my recollection, yes.

9 Q. Okay. And as far as Mr. Greening, he simply had the
10 \$75,000 in February; is that correct?

11 A. That's correct.

12 Q. Okay. And then as far as Mr. Seegan, when was the last
13 time he sent any money to Mr. Ashley?

14 A. I believe it was the \$150,000 check --

15 Q. Okay. So --

16 A. -- or, excuse me, wire transfer.

17 Q. Okay. So in 2016 the \$150,000 was the last amount of
18 money sent to Mr. Ashley from Mr. Seegan; is that correct?

19 A. I can't say it's the last amount of money. It's the
20 last amount of money that we've covered here, but there may
21 have been a transfer of money between them that wasn't --
22 that hasn't been presented as evidence. But I would have
23 to review the complete financials to say that is the last,
24 but suffice to say that was received by Mr. Ashley.

25 Q. Okay. But obviously you worked -- we've seen the

1 flowcharts. If there was another wire that came through
2 from Mr. Seegan, would it be reasonable we would have seen
3 it?

4 A. If it was -- if it was a wire transfer or a large
5 amount that was tied to investment activity, I think it's
6 fair to say we would have displayed it.

7 Q. Okay. Also we saw in the nursing -- his resumé to
8 apply for City Hospital, it said he had a Series 63
9 license.

10 A. Uh-huh.

11 Q. Do you know what a Series 63 license is?

12 A. A Series 63 -- he had a Series 6 and a Series 63. I
13 believe 63 is for life insurance and 66 -- excuse me --
14 Series 6 is for mutual funds or they're -- or I have them
15 backwards, one or the other.

16 He doesn't have a securities license --

17 Q. Okay.

18 A. -- which is a Series 7.

19 But those two licenses together allow him to be a
20 financial planner, offer investment vehicles such as mutual
21 funds and life insurance.

22 Q. Okay. And variable annuities?

23 A. Correct.

24 Q. And unit investment trusts?

25 A. I believe, based upon the information we have from

1 Parkland, that he was able to provide those types of
2 investment opportunities, yes.

3 Q. Okay.

4 MR. WHALEN: I'll pass the witness.

5 THE COURT: Anything additional?

6 MS. RATTAN: Yes, your Honor. Thank you.

7 REDIRECT EXAMINATION OF JASON RENNIE

8 BY MS. RATTAN:

9 Q. Agent Rennie, counsel was asking you about the Eastern
10 District of Texas. Let's focus on Keith Ashley and the
11 Eastern District of Texas.

12 Was his house at all times, regardless of what
13 residence he lived at, during the time period of the
14 investigation in the Eastern District of Texas?

15 A. It was.

16 Q. Were his businesses, whether it's North Texas Money
17 Management, KBKK, the Nine Band Brewery, all of his
18 businesses, were those located in the Eastern District of
19 Texas?

20 A. They were.

21 Q. And based on your investigation, the business that he
22 was conducting as a financial advisor, was that
23 headquartered and grounded in the Eastern District of
24 Texas?

25 A. It was.

1 Q. Now, the money that he was taking from the investors
2 and not investing, was a portion of that money spent on the
3 brewery, the defendant's business, located in the Eastern
4 District of Texas?

5 A. It was.

6 Q. And what about the money -- and we've seen on the
7 charts the money that was coming from the investors that
8 wasn't being invested. Was it being spent on paying the
9 defendant's mortgage?

10 A. It was.

11 Q. And was that mortgage on a house that was in the
12 Eastern District of Texas?

13 A. It was.

14 Q. So he lives here, his business is here, and he's taking
15 the diverted money and spending it on his business and his
16 house here in the Eastern District of Texas?

17 A. Correct.

18 And, in addition, he's paying off credit cards for
19 which he's utilizing to make purchases as he lives and
20 works in the Eastern District for purchases in the Eastern
21 District of Texas, which the investment money is being
22 utilized to satisfy the balances on a monthly basis on
23 those credit cards.

24 Q. Okay. And then counsel was asking you on
25 cross-examination about the wires. There were three wires

1 sent after Mr. Greening sends \$75,000 in.

2 MS. RATTAN: So if we can look at -- I think it's
3 Government's Exhibit 52A.

4 BY MS. RATTAN:

5 Q. 52A, Mr. Greening sends -- wires in \$75,000 to KBKK.
6 And defense counsel was asking you what happened to the
7 other wires. There were three other wires.

8 And you said those totaled about \$41,000; is that
9 right?

10 A. That's correct.

11 Q. So this \$41,000 here, would that be the three
12 additional wires -- so there's this wire and then three
13 more, so four wires in total related to Mr. Greening.

14 Were those three wires that were sent from BB&T to
15 Keith Ashley's other account there at Chase Bank?

16 A. Correct. They were all -- the money that Mr. Greening
17 provided funded entirely that 41,000, the three wires that
18 totaled 41,996 actually and 15 cents; and all four wires,
19 the three that totaled 41,996.15 and the \$75,000 wires,
20 were all interstate wire transfers.

21 Q. Okay. So all four of these are interstate wire
22 transfers?

23 A. Correct.

24 Q. And counsel made the point that this money, the
25 \$41,000, didn't go to pay off previous investors as part of

1 a scheme; is that right?

2 A. Correct. According to the flowchart, it did not.

3 Q. It went to gambling, though. Is that an investment?

4 A. Not a good investment.

5 Q. So let me ask you about the loss amounts to the
6 victims. Denny Willmon, what's the approximate loss
7 amount, in total, to Denny Willmon?

8 A. Sure. I misspoke previously. Mr. Willmon lost just
9 short of \$100,000. \$97,300, approximately.

10 Q. And then what about Leonid Shteyngart?

11 A. Leonid -- Mr. Shteyngart lost approximately \$124,000.

12 Q. And then Mr. Seegan, James Seegan?

13 A. Mr. Seegan lost about \$687,000; and Mr. Greening lost,
14 as he testified, approximately \$75,000.

15 Q. Now, Mr. Greening invested \$75,000. But then after he
16 made the video recording and there were the "I never said
17 UIT," "I never mentioned Parkland," everything that we
18 heard yesterday, Mr. Greening asked for his money back; is
19 that right?

20 A. He did.

21 Q. And the defendant gave money back?

22 A. He gave money back, not the original money back, but he
23 did give \$75,000 back.

24 Q. Well, what do you mean by that?

25 A. As we've shown on the previous exhibit, Mr. Greening's

1 money went to Mr. Ashley's personal expenses and business
2 expenses. So the money that was provided back to
3 Mr. Greening was other money; but it wasn't his original
4 \$75,000.

5 Q. So after James Seegan was murdered, the defendant
6 resigned --

7 MR. WHALEN: Your Honor, I'm going to object to
8 that characterization. There is no evidence in the record
9 about that. Counsel is testifying.

10 THE COURT: Okay. Sustained.

11 MR. WHALEN: Ask the jury to disregard.

12 THE COURT: The jury will disregard the last
13 statement by counsel.

14 BY MS. RATTAN:

15 Q. On February 19th of 2020, did James Seegan die of a
16 gunshot wound to his head?

17 A. He did.

18 Q. And after that happened, eventually did the defendant,
19 Keith Ashley, resign as the executor of the trust?

20 A. He did. Those are the circumstances for which I was
21 referring earlier.

22 Q. And was it also after that that he gave Mr. Greening
23 his money back?

24 A. He did.

25 MS. RATTAN: I'll pass the witness.

1 THE COURT: Any additional questions?

2 RE CROSS-EXAMINATION OF JASON RENNIE

3 BY MR. WHALEN:

4 Q. Agent Rennie, is it fair to say that the FBI didn't get
5 involved into this case or started their investigation --
6 was a direct result of the death of Mr. Seegan, correct?

7 A. I'm sorry. Could you rephrase?

8 Q. Yeah. That was poorly worded.

9 Okay. So you have the death of Mr. Seegan,
10 correct?

11 A. Sure.

12 Q. Then Carrollton PD is investigating the case.

13 A. Correct.

14 Q. And then eventually the FBI gets involved, correct?

15 A. Correct.

16 Q. Okay. So when did the FBI get involved?

17 A. The FBI got involved -- it would have been late summer,
18 early fall of 2020.

19 Q. Okay.

20 MR. WHALEN: Now if we can go look at 52B, please.

21 BY MR. WHALEN:

22 Q. Now, this is the wire on February 7th of 2020, correct?

23 A. Correct.

24 Q. Okay. And it has the originator as KBKK, LLC, correct?

25 A. Correct.

1 Q. And in viewing this wire sheet but also the bank
2 records, those are consistent and accurate, correct?

3 A. Yes.

4 Q. Okay. And then the beneficiary is JPMorgan Chase, the
5 NTMM bank account; is that correct?

6 A. Correct.

7 Q. And that information is accurate, correct?

8 A. This is provided by the bank, so I would assume that
9 the wire transfer manifest is accurate as provided by BB&T.

10 Q. Okay. Because it -- well, it fair to say that if there
11 is anything wrong on the manifest or the wire request, it's
12 not going to go through? Is that correct?

13 A. I mean, I can't speak to, you know, their -- the
14 regulations or what the system checks. I would imagine if
15 the account number doesn't exist by the receiving bank, it
16 will not be executed. It might be held.

17 But, again, it was originated from an account held
18 by BB&T; so if there was some error, it would be -- my
19 guess would be the account number.

20 Q. Okay.

21 A. If it wasn't correct and it didn't match up with who
22 the intended beneficiary was, it might then be flagged or
23 held or canceled.

24 Q. Okay. And same with the other two wire transfers.
25 Those were initiated, went through, and were successful,

1 correct?

2 A. Yes.

3 Q. Okay.

4 MR. WHALEN: I'll pass the witness.

5 THE COURT: Anything else, Ms. Rattan?

6 MS. RATTAN: No, your Honor.

7 THE COURT: Agent, you may step down.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: And what's next?

10 MS. RATTAN: The United States calls Jennifer
11 Jennings.

12 THE COURT: Ma'am, if you'll raise your right hand
13 and be sworn in.

14 (The oath is administered to the witness.)

15 THE COURT: Go ahead and proceed.

16 DIRECT EXAMINATION OF JENNIFER LYNN JENNINGS

17 CALLED ON BEHALF OF THE GOVERNMENT

18 BY MS. RATTAN:

19 Q. Please state your name.

20 A. Jennifer Lynn Jennings.

21 Q. And would you spell your name, please.

22 A. My first name is J-E-N-N-I-F-E-R. L-Y-N-N.

23 J-E-N-N-I-N-G-S.

24 Q. Ms. Jennings, where do you work?

25 A. Midland National Life Insurance.

1 Q. Where do you work? Physically where is your office?

2 A. Sioux Falls, South Dakota.

3 Q. And so you've come from Sioux Falls, South Dakota, to
4 testify?

5 A. Yes.

6 Q. How long have you worked for Midland life insurance?

7 A. It was five years last May?

8 Q. And can you explain to the jury what your job is at
9 Midland life insurance?

10 A. I am in-force customer contact. When a policy is
11 active and needs servicing by the agent or by the client,
12 those phone calls are directed to our team; and we assist
13 as a customer service role for the caller.

14 Q. So you say "for the caller." Is the role that you play
15 to answer incoming calls and assist with policies by taking
16 the calls?

17 A. It is mostly by taking the calls. We do also process
18 written communication. However, the majority is over the
19 phone.

20 Q. So let me ask you. Before coming to court today, did
21 you listen to two recordings and review transcripts related
22 to phone calls that you took as part of your work at
23 Midland Life?

24 A. Yes.

25 Q. And did those phone calls, the recorded calls,

1 accurately reflect the calls that you had coming in on the
2 lines there at Midland life?

3 A. Yes.

4 Q. There had been no additions, changes, or alterations?

5 A. No.

6 Q. You recognized your voice?

7 A. Yes.

8 Q. And the conversation?

9 A. Yes.

10 MS. RATTAN: Your Honor, we'll offer Government's
11 Exhibits 62 and 73. And each of them has a transcript, so
12 it would be 62 and 63 and 72 and 73.

13 THE COURT: Okay. So can you say that again?

14 62 --

15 MS. RATTAN: Let's see. The recording is
16 Government's Exhibit 61, and the transcript is Government's
17 Exhibit 62.

18 THE COURT: Okay.

19 MS. RATTAN: And then the recording is
20 Government's Exhibit 73 and -- rather, 72; and the
21 transcript is Government's Exhibit 73.

22 THE COURT: Okay. Any objection?

23 MR. WHALEN: We'll just object to predicate, your
24 Honor.

25 THE COURT: I'll overrule that.

1 So 61 and 62 will be admitted, and 72 and 73 will
2 be admitted.

3 MS. RATTAN: Your Honor, may we publish
4 Government's Exhibits 61 and 62?

5 THE COURT: Yes, you may.

6 MS. RATTAN: Thank you.

7 (Audiovisual presentation to the jury.)

8 BY MS. RATTAN:

9 Q. So let me ask you some questions about the call.

10 MS. RATTAN: If we can publish Government's
11 Exhibit 62, page 1.

12 BY MS. RATTAN:

13 Q. This is the transcript of the call that was showing as
14 the call was playing. So the call comes in on January 21st
15 of 2020; is that right?

16 A. Yes, that is correct.

17 Q. And it says that the participants in the conversation
18 are you, Jennifer Jennings; and the other person is
19 identified as Keith Todd Ashley; is that correct?

20 A. Yes.

21 Q. Now, when the call comes in, you answer. You say,
22 "This is Jennifer. May I have your name and the policy
23 number?"

24 And then the agent code is also discussed.

25 So what's going on there?

1 A. We are required to verify our callers. Whether they
2 are policy owners or agents, we have to ensure that they
3 are authorized to receive information on the policy.

4 When we are speaking with an agent, we ask for
5 their active Midland agent code to ensure that they are
6 properly authorized on the policy.

7 Q. And so the caller says, "My name is Keith Ashley" and
8 provides his agent code.

9 Are you able to realtime verify that?

10 A. Yes.

11 Q. And then he says that he's calling about -- "and I am
12 calling about the last name is Seegan."

13 The last name Seegan and he gives his policy
14 number. So what does that mean to you?

15 A. That tells me that he is an agent calling to service
16 one of his clients' policies, and at that point I would
17 have waited patiently until I was provided the policy
18 number.

19 MS. RATTAN: And then if we can look at
20 Government's Exhibit 62, page 1 and focus on lines 19
21 through 22.

22 BY MS. RATTAN:

23 Q. Here you say, "How can I help?"

24 And he says, "Yes, this client sent, I guess" --
25 he says -- "a beneficiary change form."

1 So what's going on here?

2 A. When a client wishes to change the beneficiary of their
3 life insurance policy -- it is a very common occurrence --
4 we have a prepared form that we do require the clients to
5 complete and submit back to our office for processing of
6 that requested change.

7 MS. RATTAN: And then let's look at Government's
8 Exhibit 62, page 2, lines 1 through 4.

9 BY MS. RATTAN:

10 Q. And, in fact, does the agent, Keith Ashley, tell you
11 what the change is going to be?

12 A. Yes, he did.

13 Q. What did he say?

14 A. He said that he was going to be making his trust a
15 beneficiary.

16 Q. The trust was going to be the beneficiary?

17 A. Yes.

18 Q. The beneficiary of the life insurance policy?

19 A. Correct.

20 Q. And that's the change he's trying to make?

21 A. Yes.

22 Q. So then as we page down, we see there is some -- you
23 call him Jason and he corrects you and he says (as read),
24 "No, it's Keith. I'm Keith."

25 Is that right?

1 A. That's correct.

2 Q. So as far as who you're talking to, he's provided his
3 name, Keith Ashley. You've verified his agent code. And
4 he's also told you twice it's Keith, it's Keith, on lines
5 11 and 12.

6 A. Yes.

7 Q. "My name's Keith."

8 And so what do you tell him is happening with the
9 change in the beneficiary?

10 A. At that point I was able to verify that the paperwork
11 had been received the previous day. There was no
12 indication of it being completed or processed at that time,
13 so I was not able to comment on the status of the change.
14 But I was able to confirm that the appropriate paperwork
15 had been received.

16 Q. And so that was on January 21st of 2020?

17 A. Correct.

18 Q. Now, you identified two conversations that you had with
19 the Midland life agent Keith Ashley. The next one happened
20 on January 27th of 2020, about a week later.

21 And have you reviewed that conversation?

22 A. Yes.

23 MS. RATTAN: Your Honor, may we publish
24 Government's Exhibit 72 and the transcript, 73?

25 THE COURT: Yes, you may.

1 (Audiovisual presentation to the jury.)

2 BY MS. RATTAN:

3 Q. And you're checking with your fax team, as you tell
4 him?

5 A. Yes, that is correct.

6 (Audiovisual presentation continues.)

7 MS. RATTAN: And I don't know if we can skip
8 forward to the spot -- okay.

9 (Audiovisual presentation continues.)

10 BY MS. RATTAN:

11 Q. Okay. So what's going on in this call on January 27th
12 of 2020?

13 A. When I received this call, I -- when -- excuse me.

14 Receiving a call requesting if a form has been
15 received, we do have to research the method in which it was
16 sent, either via mail, fax, or email.

17 So at that time because I was informed it was
18 received via fax, I was reaching out to our correspondence
19 team, provided them the fax number that I was given and the
20 page count to verify if anything had been received at that
21 time frame.

22 Confirming that no, there was nothing that had
23 shown come through, I did offer to provide my work email
24 address for a direct contact so I could ensure that the
25 paperwork is submitted for processing as quickly as

1 possible.

2 Q. Okay.

3 MS. RATTAN: And let's look at Government's
4 Exhibit 73, which is the transcript.

5 BY MS. RATTAN:

6 Q. And again you identify yourself, Jennifer Jennings.
7 And the agent calling in identifies that his name is Keith
8 and he provides his agent code of record again; is that
9 right?

10 A. Yes.

11 Q. And you're able to verify that as he's calling in?

12 A. Yes.

13 Q. And he tells you who he's calling you about. He says
14 that he's calling about Seegan, S-E-E-G-A-N. The name is
15 James. And he talks about that policy; is that right?

16 A. Yes.

17 Q. And again he tells you, just like he did on the earlier
18 call, that he sent up a beneficiary change form that was to
19 make his testamentary trust the beneficiary --

20 A. Yes.

21 Q. -- is that right?

22 A. That's correct.

23 Q. So that's what he's trying to accomplish, make the
24 trust the beneficiary?

25 A. Yes.

1 MS. RATTAN: And then if we can look at
2 Government's Exhibit 73, page 2, lines 4 through 6.

3 Let's see. 73, page 2. And we can broaden it
4 out. Lines 4 through 10.

5 BY MS. RATTAN:

6 Q. And, in fact, he says in here that they faxed it and
7 refaxed it and wanted to make sure and they faxed it; is
8 that right?

9 A. Yes.

10 Q. So he's calling you about it, he's telling you that he
11 faxed it, and then he's telling you again that he's going
12 to email it to you; is that right?

13 A. Yes.

14 Q. And this is all to ensure that the Midland life team
15 gets in place this beneficiary change?

16 A. Correct.

17 Q. And the beneficiary change, according to what Keith
18 Ashley is telling you on the calls, is going to be that the
19 trust, the Keith Ashley trust, is going to become the
20 beneficiary of the Midland life policy?

21 A. He told me the trust, yes. Yes.

22 MS. RATTAN: May I approach the witness, your
23 Honor?

24 THE COURT: Yes.

25 *

1 BY MS. RATTAN:

2 Q. Now, we just listened to the January 27th of 2020 call.
3 Let me show you this. It was Keith Ashley. And he said
4 that he faxed, he was going to email, and he called you --
5 and you're Midland life; you're an employee of Midland
6 life -- about the beneficiary documents changing James
7 Seegan's beneficiary to his trust; is that right?

8 A. Correct.

9 MS. RATTAN: I'll pass the witness, your Honor.

10 THE COURT: Cross-examination?

11 MR. WHALEN: Your Honor, we would ask the
12 government to take down the exhibit, the board, please.

13 Thank you, Jay.

14 CROSS-EXAMINATION OF JENNIFER LYNN JENNINGS

15 BY MR. WHALEN:

16 Q. Ms. Jennings, how are you? Good morning.

17 A. Good morning.

18 Q. How long have you worked at Midland National Life?

19 A. It has been five years last May.

20 Q. Last May.

21 And you said you came in from Sioux Falls, South
22 Dakota; is that correct?

23 A. That's correct.

24 Q. Okay. Back in January of 2020, were you still working
25 in the office back then?

1 A. January of 2020, yes, we were.

2 Q. Okay. So you were physically located in Sioux Falls,
3 South Dakota?

4 A. Yes.

5 Q. Okay. Every phone call that comes in to Midland
6 National Life is recorded, correct?

7 A. Correct.

8 Q. Okay. And they've been doing that for how many years?

9 A. Longer than I've been there. I believe as long as the
10 technology has been available.

11 Q. Okay. So if I'm an agent -- life insurance agent and I
12 call in to the line, I know everything is being recorded,
13 correct?

14 A. Correct.

15 Q. Okay. And as far as these phone calls that you had,
16 when somebody asks you about a policy, you're on a
17 computer, correct?

18 A. Correct.

19 Q. And you look up based on the policy number, correct?

20 A. Yes.

21 Q. And you have information there to review, correct?

22 A. Yes.

23 Q. And you can see everything that's going on with the
24 policy, correct?

25 A. Yes.

1 Q. Okay. Now, you don't -- if you -- if Mr. Ashley
2 received this beneficiary change form, you don't do
3 anything with it other than forward it on to the
4 appropriate people, correct?

5 A. Correct.

6 Q. You don't have any decision-making authority to change
7 a policy or reduce a policy or do anything like that,
8 correct?

9 A. No.

10 Q. Your role is to be a customer service representative,
11 to answer questions and direct information to the right
12 people, correct?

13 A. Yes.

14 Q. Okay. So if I called up and said I want to speak to
15 somebody about increasing or decreasing my life insurance,
16 that's not your department?

17 A. I would answer your questions. I would provide you
18 with the appropriate forms or paperwork that would be
19 needed.

20 Q. Okay.

21 A. I would walk you through that, but I would not make the
22 change.

23 Q. Okay. So -- and just so we're clear, anytime anybody
24 calls concerning a specific policy, those calls are
25 recorded?

1 A. Yes.

2 Q. Great. All right.

3 Oh, well, let me ask you this, too: If there is a
4 change -- if you know, if there is a change to a policy,
5 significant change or any change, does that generate a
6 letter to the client?

7 A. Yes.

8 Q. Okay. And so if the beneficiary is changed, amounts
9 increase, Midland National is going to generate a letter
10 and send it to the insured's address, correct?

11 A. Correct.

12 Q. Okay. And that happens automatically?

13 A. Yes.

14 Q. In every situation?

15 A. Yes.

16 Q. And if I'm an agent of Midland National, I know that,
17 correct?

18 A. Yes.

19 Q. Okay. And is there a way to opt out of that or --

20 A. No.

21 Q. -- everything gets mailed?

22 A. No, there is not a way to opt out of it. Everything is
23 mailed to the policy owner.

24 Q. Okay. And that happens in every occasion. If there is
25 a change, something gets mailed?

1 A. Yes, that's correct.

2 Q. Okay.

3 MR. WHALEN: I'll pass the witness.

4 THE COURT: Anything additional?

5 MS. RATTAN: Yes, your Honor.

6 May I approach the witness?

7 THE COURT: Yes.

8 And would you move the exhibit book to the back so
9 it doesn't block any view?

10 MS. RATTAN: Yes, your Honor.

11 THE COURT: Thank you.

12 MS. RATTAN: May I return?

13 THE COURT: Yes.

14 REDIRECT EXAMINATION OF JENNIFER LYNN JENNINGS

15 BY MS. RATTAN:

16 Q. Ms. Jennings, we spoke a moment ago about the phone
17 call that you had with Mr. Ashley; is that right?

18 A. Yes.

19 Q. And at the end of the phone call, you gave him your
20 email address so that he could email you the documents that
21 he was talking about to be sure that Midland life got them.

22 A. Correct.

23 Q. And I've just directed your attention, when I was at
24 the stand with you, to Government's Exhibit Number 71; is
25 that right?

1 A. Yes.

2 Q. Do you recognize that as being the email that you, in
3 fact, received from Keith Ashley --
4 keith@northtexasmoneymanagement.com on that same day,
5 January 27th of 2020?

6 A. Yes.

7 MS. RATTAN: And, your Honor, we'll offer
8 Government's Exhibit 71.

9 MR. WHALEN: No objection, your Honor.

10 THE COURT: 71 will be admitted.

11 MS. RATTAN: Okay. And can we publish it?

12 THE COURT: Yes, you may.

13 BY MS. RATTAN:

14 Q. Okay. Ms. Jennings, can you explain to us what this
15 is?

16 A. This is the email that I received with a -- with the
17 attachment of the beneficiary change form.

18 I submitted the beneficiary change form to our
19 processing team later that day to ensure that the change
20 was in for processing as needed.

21 Q. Okay. So he told you that he was faxing it. He's
22 calling you about it. And now here he's following up and
23 emailing you about it; is that right?

24 A. Yes.

25 Q. So let's look at Government's Exhibit 71, page 2. And,

1 of course, this is Midland life Insurance Company; and
2 that's where you work.

3 And what's the name of this document?

4 A. The Beneficiary Change Request form.

5 Q. The Beneficiary Change Request form.

6 And who is the insured?

7 A. The insured is James Seegan.

8 Q. James Seegan.

9 And is that the person who Keith Ashley mentioned
10 to you when he called?

11 A. Yes.

12 Q. And so this is going to be about changing James
13 Seegan's beneficiary to his life insurance policy?

14 A. Correct.

15 MS. RATTAN: And if we can look at the top of
16 Government's 71, page 4.

17 BY MS. RATTAN:

18 Q. What's going on here?

19 A. This is indicating that the requested change is to make
20 a James Seegan Revocable Trust 100 percent primary
21 beneficiary.

22 Q. So all of the life insurance money is going to go into
23 the James Seegan Revocable Trust?

24 A. Yes.

25 Q. And then there's initials and a date over here, and it

1 looks like January 24th of 2020; is that right?

2 A. Yes.

3 Q. And it looks like KTA and JS, which could be Keith Todd
4 Ashley and James Seegan; is that right?

5 A. Yes.

6 MS. RATTAN: And then if we can look on
7 Government's Exhibit 71, page 5.

8 BY MS. RATTAN:

9 Q. What's going on here?

10 A. This is the signature page for the Beneficiary Change
11 Request form itself. Required signature is the policy
12 owner and the spouse if in a community property state.

13 Q. And that's dated January 24th of 2020?

14 A. Yes.

15 MS. RATTAN: And then if we can look at the next
16 page, which is Government's Exhibit 71, page 6.

17 BY MS. RATTAN:

18 Q. And what's going on here?

19 A. This is the Certification of Trust Agreement providing
20 the information that we require on the trust when we are
21 changing the beneficiary to a trust.

22 This form is completed as a testamentary trust.
23 So the form was not fully completed towards the end -- to
24 the end as a trust would be, a revocable trust would be.

25 Q. Okay. What do you mean by that?

1 A. When a trust is a testamentary trust, we only ask the
2 policyholder or trustee to fill out the first half of the
3 page.

4 If it is a trust that is in force as of that date,
5 then we do ask to provide the rest of the information as
6 far as the trustees.

7 Q. And so this is what was filled out on this date, and
8 it's for the James E. Seegan Revocable Trust; is that
9 right?

10 A. Yes.

11 Q. And it has the trust effective date here of April 16th
12 of 2019; is that right?

13 A. Yes.

14 MS. RATTAN: And I'll pass the witness, your
15 Honor.

16 THE COURT: Additional questions?

17 REXCROSS-EXAMINATION OF JENNIFER LYNN JENNINGS

18 BY MR. WHALEN:

19 Q. Ms. Jennings, is it -- it's not uncommon for agents to
20 help their clients make changes to their policies, correct?

21 A. Correct.

22 Q. Okay.

23 A. It is not uncommon.

24 Q. So you field calls from agents as well as insureds on a
25 regular basis, correct?

1 A. Yes, sir.

2 Q. Okay. So the fact an agent called you to assist with
3 the change of beneficiary form, that's not unusual,
4 correct?

5 A. It is not unusual, no, sir.

6 Q. Okay. Thank you very much.

7 THE COURT: Can this witness be fully excused?

8 MS. RATTAN: Yes, please.

9 MR. WHALEN: No objection, your Honor.

10 THE COURT: Okay. Ma'am, you are free to leave.
11 Thank you.

12 What's next?

13 MS. RATTAN: Rachel Appel.

14 THE COURT: Ma'am, if you'll raise your right hand
15 to be sworn in.

16 (The oath is administered to the witness.)

17 THE COURT: Go ahead and proceed.

18 MS. RATTAN: Thank you, your Honor.

19 DIRECT EXAMINATION OF RACHEL APPEL

20 CALLED ON BEHALF OF THE GOVERNMENT

21 BY MS. RATTAN:

22 Q. Would you please state your name.

23 A. My name is Rachel Appel.

24 Q. And how do you spell your name?

25 A. My first name, R-A-C-H-E-L. My last name, A-P-P-E-L.

1 Q. And where do you work?

2 A. I currently -- currently?

3 Q. Yes.

4 A. I work for Coldwell Banker, Tony Bachman Group.

5 Q. Did you previously work for Midland life?

6 A. I did.

7 Q. And when did you work for Midland life?

8 A. I worked in -- at Midland since October of 2017 until
9 November of 2020.

10 Q. And will you describe when you worked for Midland life
11 what your job was there? What did you do?

12 A. I started out in policy billing and accounting and
13 then -- so I handled premium changes, draft information,
14 and more of the processing aspect.

15 Then I moved to customer contact where we fielded
16 calls, incoming and outgoing phone calls with agents and
17 policyholders and internal phone calls as well, just to see
18 how we could assist and make sure that it got in the right
19 processing hands and things got handled properly.

20 Q. And in January of 2020, is that the position that you
21 had?

22 A. Yes.

23 Q. And did you receive a phone call from an agent who
24 identified themselves as Keith Ashley?

25 A. Yes.

1 Q. Have you reviewed that call before coming to court
2 today?

3 A. Yes.

4 Q. And is it accurate as far as what happened?

5 A. He had called in to check on the status of a
6 beneficiary change form. We were looking at why it was
7 returned as what we call NIGO, or not in good order, and --

8 MR. WHALEN: Objection as to the narrative, your
9 Honor.

10 THE COURT: Go ahead and ask another question.

11 BY MS. RATTAN:

12 Q. So Keith Ashley, Agent Keith Ashley called in; is that
13 right?

14 A. That's correct.

15 Q. And you've listened to the call before coming to court
16 today?

17 A. Yes.

18 Q. And the call is accurate about what happened; is that
19 right?

20 A. Yes.

21 MS. RATTAN: Your Honor, may we publish
22 Government's Exhibit -- well, first offer Government's
23 Exhibits 63 and 64?

24 MR. WHALEN: Predicate and authentication.

25 THE COURT: Well, Ms. Rattan?

1 MS. RATTAN: I can ask her some more questions.

2 THE COURT: Okay. Go ahead.

3 BY MS. RATTAN:

4 Q. Did you listen to this, and did you identify your
5 voice?

6 A. Yes.

7 Q. And have there been any additions, changes, or
8 alterations to the call?

9 Is it different from the call that you had that
10 was recorded on January 23rd of 2020?

11 A. No.

12 MS. RATTAN: Your Honor, we would offer this.
13 It's Government's Exhibit 63 as the recording and 64 as the
14 transcript.

15 MR. WHALEN: Same objections, your Honor.

16 THE COURT: Okay. Overruled. 63 and 64 will be
17 admitted.

18 MS. RATTAN: And may we publish it?

19 THE COURT: You may.

20 (Audiovisual presentation to the jury.)

21 BY MS. RATTAN:

22 Q. So basically what's going on in this call?

23 A. He had called in to check on the status of a
24 Beneficiary Change Request, so we pulled up the request
25 item that is our method of communication between us and the

1 processors.

2 So the processors had noted back before they sent
3 it as not in good order back to us -- or sent out a letter,
4 kind of depending on the circumstances. I'm not sure which
5 one they did in that instance. But they would send it back
6 for either a callback or a letter being sent to the policy
7 owner just to let them know of those updates that needed to
8 be made to the form to put that change into effect.

9 Q. Okay. And let me direct your attention --

10 MS. RATTAN: If we can focus on Government's 64,
11 page 2.

12 64, page 2. And look at lines 15 through 18.

13 Back it up and do 14, sorry, 14 through 18.

14 BY MS. RATTAN:

15 Q. Okay. This is the agent, Ashley; and he tells you what
16 the policy number is. He tells you who the policy is for,
17 and that's Seegan; is that right?

18 A. Yes.

19 Q. And Ashley, the agent, is telling you that it's about a
20 beneficiary change form and he needs to know what the
21 status on it is; is that right?

22 A. Yes.

23 Q. And, again, this phone call that you took is on
24 January 23rd of 2020; is that right?

25 A. Yes.

1 Q. And then the rest of the phone call is all about how to
2 get this policy change form to make the trust the
3 beneficiary in place?

4 A. Yes.

5 Q. And then you're telling him that it needs to be
6 corrected; and he's saying that he's going to correct it,
7 is that right, and send it back?

8 A. Yes.

9 Q. And that the corrections need to be initialed; is that
10 right?

11 A. Yes.

12 Q. Let me show you Government's Exhibit Number 71.

13 MS. RATTAN: If we can publish that, Government's
14 Exhibit 71, page 2.

15 BY MS. RATTAN:

16 Q. And then this is a Beneficiary Change Request form with
17 Midland National Life Insurance Company; is that right?

18 A. Yes.

19 Q. And it has the name of the insured, James Seegan. Is
20 that the name of the insured that you were talking to Agent
21 Keith Ashley about?

22 A. Yes.

23 Q. And let me direct your attention to page 4 of
24 Government's Exhibit 71.

25 And your -- the call that you had came in on the

1 23rd, and this looks like the initials are KTA and JS. And
2 that's the next day, the 24th; is that right?

3 A. Yes.

4 Q. And this is talking about the primary beneficiary, and
5 it's going to be the James E. Seegan Revocable Trust; is
6 that correct?

7 A. Yes.

8 Q. Okay.

9 MS. RATTAN: I'll pass the witness, your Honor.

10 THE COURT: Mr. Whalen, I don't know how many
11 questions you have, if we can maybe finish the witness
12 before the lunch break or --

13 MR. WHALEN: Yeah, I think we can.

14 THE COURT: Okay. Go ahead.

15 CROSS-EXAMINATION OF RACHEL APPEL

16 BY MR. WHALEN:

17 Q. Hi, Ms. Appel. How are you?

18 A. I'm well. How are you?

19 Q. Okay.

20 When you took this call, were you in -- where were
21 you located when you took this call?

22 A. In the Sioux Falls, South Dakota, office in customer
23 contact.

24 Q. Okay. And just once again, every phone call that ever
25 comes in to that customer contact is recorded, correct?

1 A. Yes, sir.

2 Q. And every agent knows that, correct?

3 A. Yes.

4 Q. And I think in this phone call you indicated that
5 something was mailed out that something was wrong with the
6 form, correct?

7 A. I believe so, yes.

8 Q. Okay. So if the form comes in and something is wrong
9 with it, that generates a letter from Midland National to
10 the policy owner, correct?

11 A. Typically there would be a letter typed by the
12 processing team to just -- more clearly than just like an
13 automated letter so we can make sure we kind of nip it in
14 the bud.

15 Q. Okay. And it seemed to me that you mentioned something
16 was mailed out because that was what was indicated on your
17 screen, correct?

18 A. I believe so, yes.

19 Q. Okay. And that would go to Mr. Seegan notifying him
20 that there was something wrong with the change of
21 beneficiary form, correct?

22 A. Yes. It would go to Mr. Seegan as well as -- as long
23 as he had an active agent, so Mr. Ashley as well.

24 Q. Okay. So it would send out two letters?

25 A. Correct.

1 Q. Okay. But one letter is always going to the
2 policyholder?

3 A. Always, yes.

4 Q. Okay.

5 MR. WHALEN: I'll pass the witness.

6 THE COURT: Anything additional?

7 MS. RATTAN: No, your Honor.

8 THE COURT: Okay. Can this witness be fully
9 excused?

10 MS. RATTAN: Yes, please.

11 MR. WHALEN: Yes, your Honor.

12 THE COURT: Ma'am, you are free to leave. Thank
13 you.

14 At this time we're going to go ahead and take our
15 lunch break. Ladies and gentlemen, again, please don't
16 discuss the case among yourself or anyone else. Don't do
17 any outside research, and we'll come back at 1:00. Have a
18 good lunch.

19 (The jury exits the courtroom, 12:00 p.m.)

20 THE COURT: Anything further from the government?

21 MS. RATTAN: Your Honor, in terms of the timeline,
22 that's been marked as an exhibit; and it's on the exhibit
23 list. We'll be building it as the evidence is presented,
24 but we are going to offer it as an exhibit and I believe
25 it's perfectly appropriate to display it.

1 MR. WHALEN: We would object to that. It has
2 items on it that have not been proven up yet, and it -- on
3 the timeline that I saw -- and it has a lot of -- it's more
4 argument than it is factual.

5 THE COURT: Well, Ms. Rattan, you're talking about
6 the timeline that you're putting up on the board right now?

7 MS. RATTAN: Yes, your Honor.

8 THE COURT: I mean, I don't see a problem with
9 that, Mr. Whalen. What's wrong with that?

10 MR. WHALEN: Okay. Well, I misunderstood because
11 she said she's offering the timeline. And if she's
12 offering the completed timeline, which was Exhibit 71, then
13 I'm objecting to that.

14 THE COURT: Well, I assume she's not going to
15 offer it until she completes the timeline.

16 MS. RATTAN: That's correct.

17 THE COURT: But then she is going to offer that.

18 MR. WHALEN: Okay.

19 THE COURT: So she's not offering it now.

20 MS. RATTAN: We're not. But in the interim, I
21 believe it's appropriate to display it to the jury and I
22 don't believe we have to turn it away from the jury.

23 THE COURT: Oh, that's the issue.

24 MS. RATTAN: Yes.

25 THE COURT: Okay.

1 MR. WHALEN: Well, I believe they do because it's
2 a demonstrative that they don't get -- the jury doesn't get
3 to focus on that the entire time.

4 And if they want to use it with a witness, that's
5 fine; but they need to take it down.

6 THE COURT: Well, Ms. Rattan, I think it's fair
7 until it is offered. It's a demonstrative during your --
8 like any other demonstrative, when the other side is doing
9 their part, the demonstrative doesn't have to be displayed.
10 So just as a courtesy, do that until it is fully admitted;
11 and then, you know, we can talk about whether it's
12 published at that point.

13 MS. RATTAN: Yes, your Honor.

14 THE COURT: But also you're going to -- when it's
15 fully admitted, you're also going to have a reduced version
16 to submit as an exhibit.

17 MS. RATTAN: Yes, your Honor.

18 THE COURT: Just following the pattern from prior
19 cases with you, I understand that's where we're going so --
20 okay. But that's fine. If you'll just have your staff or
21 have someone just automatically -- when you're done and
22 when you pass the witness, then it can be turned back
23 upside down so he doesn't have to ask; and then we'll deal
24 with it later when it is fully admitted. Okay?

25 MR. WHALEN: That's fine. Thank you, your Honor.

1 THE COURT: See y'all back in an hour.

2 (Recess, 12:02 p.m. to 1:01 p.m.)

3 (Open court, defendant present, jury present.)

4 THE COURT: Please be seated.

5 Ladies and gentlemen, I hope you had a nice lunch.

6 Okay. What's next?

7 MS. RATTAN: Your Honor, the United States calls

8 Paula Diaz.

9 THE COURT: Ma'am, if you'll raise your right hand
10 and be sworn in.

11 (The oath is administered to the witness.)

12 THE COURT: Go ahead and proceed.

13 DIRECT EXAMINATION OF PAULA DIAZ

14 CALLED ON BEHALF OF THE GOVERNMENT

15 BY MS. RATTAN:

16 Q. Please state your name.

17 A. Paula Diaz.

18 Q. Ms. Diaz, where do you work?

19 A. Midland National.

20 Q. Midland National Life Insurance Company?

21 A. Yes, ma'am. Sorry.

22 Q. Okay. So that's where you work. Where physically is
23 your workplace, your work site?

24 A. Sure. Our -- my office location is in Sioux Falls,
25 South Dakota.

1 Q. And you came here from Sioux Falls, South Dakota, to
2 testify?

3 A. Yes, ma'am.

4 Q. Can you tell the jury what you do at Midland life?

5 A. Yes, absolutely.

6 Currently I work for our claims department. Prior
7 to -- three years I've done that in our claims department.
8 Prior to that, I did work in our life customer contact
9 department.

10 Q. And so in January of 2020, what were you doing?

11 A. I was working half-days in our life customer contact
12 department and half-days in our claims department as a
13 transition period.

14 Q. And did you review a phone call that you received while
15 you were working in that capacity at Midland life?

16 A. Yes.

17 Q. And did you listen to the call?

18 A. Yes, ma'am.

19 Q. Did you hear your voice?

20 A. Yes, ma'am.

21 Q. Did you make sure the call was accurate and that there
22 hadn't been any changes, additions, alterations, anything
23 like that?

24 A. Yes, ma'am.

25 Q. And did you identify that it was an agent who called in

1 whose ID you had verified when the call came in?

2 A. Yes, ma'am.

3 MS. RATTAN: Your Honor, we'll offer Government's
4 Exhibit 65, which is the call, and 66, which is the
5 transcript.

6 MR. WHALEN: No objection, your Honor.

7 THE COURT: Okay. 65 and 66 will be admitted.

8 MS. RATTAN: And may we publish them?

9 THE COURT: Yes, you may.

10 (Audiovisual presentation to the jury.)

11 BY MS. RATTAN:

12 Q. Okay. Let me ask you some questions, Ms. Diaz, about
13 the call. It came in, again, on January 24th of 2020; is
14 that right?

15 A. Yes, ma'am.

16 MS. RATTAN: And if we can publish Government's
17 Exhibit 66 on page 1.

18 BY MS. RATTAN:

19 Q. You've got the date there at the top, and the
20 participants in the call are you and Keith Ashley; is that
21 right?

22 A. Yes.

23 Q. And you say, "Thank you for calling customer contact."

24 And there on lines 23 and 24 he identifies who he
25 is. He gives his name, Keith Ashley, and his agent code so

1 that you know it's him.

2 And you verified the code?

3 A. Yes, ma'am.

4 MS. RATTAN: And then if we can look at
5 Government's 66, page 2, at the top of the page.

6 BY MS. RATTAN:

7 Q. He says what he's calling about. He's calling about
8 the name of the insured and he says it's Seegan. "Last
9 name, Seegan."

10 And he spells it out and says the first name is
11 James; is that right?

12 A. Yes.

13 Q. And he says he's just left his house.

14 A. Yes.

15 Q. Now, he says that he wants to be sure that he gets it
16 right for him; and he talks about --

17 MS. RATTAN: If we can look at lines 20 through
18 25.

19 BY MS. RATTAN:

20 Q. He says -- and this is Ashley. "So, the first thing I
21 believe was on page 3 of 7, Section 4A. He had put 'NA.'
22 Now he has put 'James E. Seegan revocable trust,' and
23 100 percent as the primary beneficiary."

24 And then the date of birth is the date of the
25 trust; is that right?

1 A. Yes.

2 Q. Let me direct your attention to Government's
3 Exhibit 71.

4 MS. RATTAN: If we can look at page 4. 71,
5 page 4.

6 BY MS. RATTAN:

7 Q. Let me show you this Beneficiary Change Request. And
8 it says "Primary Beneficiary(ies)," and it says the
9 "James E. Seegan Revocable Trust"; is that right?

10 A. Yes.

11 Q. And then as the date of birth, he says the date of
12 birth is going to be the date that the trust was created?

13 A. Yes, ma'am.

14 Q. And that this document lists April 16th of 2019?

15 A. Yes, ma'am.

16 Q. And then you see some initials over here, and it looks
17 like KTA and JS and the date January 24th of 2020.

18 A. Yes, ma'am.

19 MS. RATTAN: Now let's go back to the transcript,
20 Government's Exhibit 66, page 3 now.

21 Let's go on to the next page and look at the top
22 of the page through line --

23 BY MS. RATTAN:

24 Q. Okay. So he says that's the primary beneficiary. The
25 trust is going to be the primary beneficiary.

1 And then he says that he and his wife signed it on
2 the certificate of trust agreements. Is that what he
3 represents to you?

4 A. That is what he said, yes.

5 MS. RATTAN: And then if we can look at
6 Government's Exhibit 66, page 5.

7 BY MS. RATTAN:

8 Q. And then it seems that he is still trying to get the
9 document right, the change of trust, the beneficiary; is
10 that right?

11 A. It sounds like he still has questions about that, yes.

12 Q. And here -- and this is at the end of the call -- he
13 says, "And then there's no need for a trustee signature."

14 So he wants to confirm that the trustee doesn't
15 have to sign on the change of beneficiary form; is that
16 right?

17 A. Yes, ma'am.

18 Q. Okay.

19 MS. RATTAN: I'll pass the witness.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION OF PAULA DIAZ

22 BY MR. WHALEN:

23 Q. Good afternoon, Ms. Diaz. How are you?

24 A. Good. How are you?

25 Q. I'm doing well.

1 First time to Texas?

2 A. No.

3 Q. Oh, good. Welcome back.

4 A. Thank you.

5 Q. You're welcome.

6 Just so -- you've worked -- how many years have
7 you worked at Midland National?

8 A. December of this year will be ten years.

9 Q. Okay. And fair to say that every phone call that comes
10 into that office, customer care, is recorded?

11 A. Yes. That is very true, yes.

12 Q. Okay. And everybody -- every agent and every policy
13 owner knows that when they call in, correct?

14 A. Yes, sir.

15 Q. Okay. And anytime there is a change to a policy, a
16 letter is mailed to the owner, correct?

17 A. Yes, sir.

18 Q. Okay. And that happens automatically. No one can
19 change that, correct?

20 A. That is correct, sir.

21 Q. Okay. And it appeared, based on the phone call --
22 there is a reference to "in the letter." He referred to a
23 letter. You remember that?

24 A. Yes.

25 Q. Would that seem to indicate to you that Midland

1 National had sent a letter to the policy owner explaining
2 what was wrong with the form?

3 A. That is what it sounds like to me, yes.

4 Q. Okay. And as you're sitting at your computer, the data
5 that you have there can tell you when letters have been
6 mailed, et cetera, correct?

7 A. Yes, sir.

8 Q. Okay. And are they sent regular mail generally, or are
9 they certified mail or just regular mail?

10 A. Our letters are mailed via USPS first class mail.

11 Q. Okay. And it's going to go to the address of the owner
12 that's named on the policy; is that correct?

13 A. Any letters that generate go to the owner's address,
14 and it cc's to the agent of record as long as they are
15 active.

16 Q. Okay. And you were asked about where it said a
17 trustee's signature is not required. Do you know anything
18 about wills and trusts or anything like that?

19 A. I know the business need of what I need to know about a
20 trust.

21 Q. Okay. That's all you -- that's all you know.

22 A. Yes.

23 Q. Fair enough.

24 MR. WHALEN: I'll pass the witness.

25 THE COURT: Anything else?

1 MS. RATTAN: No, your Honor.

2 THE COURT: Can this witness be fully excused?

3 MS. RATTAN: Yes, please.

4 MR. WHALEN: Yes, your Honor.

5 THE COURT: Ma'am, you are free to leave. Thank
6 you.

7 THE WITNESS: Thank you.

8 THE COURT: What's next?

9 MS. RATTAN: The United States calls Jennifer
10 Bauman.

11 THE COURT: Ma'am, if you'll raise your right hand
12 to be sworn in.

13 (The oath is administered to the witness.)

14 THE COURT: Go ahead and proceed.

15 DIRECT EXAMINATION OF JENNIFER BAUMAN

16 CALLED ON BEHALF OF THE GOVERNMENT

17 BY MS. RATTAN:

18 Q. Please state your name.

19 A. Jennifer Bauman.

20 Q. And would you please spell your name.

21 A. First and last?

22 Q. Yes, please.

23 A. Okay. J-E-N-N-I-F-E-R and then Bauman, B, as in "boy,"

24 A-U-M-A-N.

25 Q. And we can hear you pretty well, but your voice is a

1 little soft so --

2 A. Okay.

3 Q. -- as much as you can, will you speak into the
4 microphone?

5 A. Yeah, I'll do my best -- ooh.

6 Q. No, that's good.

7 A. Okay.

8 Q. Have you worked at Midland life insurance company?

9 A. Have I? Yes.

10 Q. Did you work there?

11 Can you describe for the jury when it was that you
12 worked there?

13 A. I worked from March of 2014 till April of 2020.

14 Q. And what did you do when you worked at Midland life?

15 A. I worked in their customer service department. I took
16 phone calls from agents and policy owners. I answered
17 policy questions, helped agents with information to do
18 their job.

19 I moved on to helping with beneficiary changes,
20 like helping them fill out their forms, doing statements of
21 insurance, billing changes, statements of insurance, things
22 like that, and then promoted up to helping with annuity
23 calls as well. So then I was doing both.

24 Q. So let me ask you about January 29th of 2020. Is that
25 the job that you had working for Midland life?

1 A. Yes, it was.

2 Q. And the duties that you described, that's what you were
3 doing on that day?

4 A. Yes, I was.

5 Q. Did you answer a call from an agent by the name of
6 Keith Ashley?

7 A. Yes, I did.

8 Q. Have you reviewed that call before coming to court
9 today?

10 A. I did.

11 Q. And did you recognize your voice?

12 A. Actually, I did.

13 Q. And was the call accurate? There had been no changes
14 or alterations, additions, deletions, anything like that?

15 A. No. It was exactly as -- as it was.

16 Q. Okay. And did you have some memory of the call?

17 A. Actually, I did, yeah.

18 MS. RATTAN: Your Honor, we'll offer Government's
19 Exhibit 74, the audio, and 75, the transcript.

20 MR. WHALEN: No objection, your Honor.

21 THE COURT: Okay. 74 and 75 will be admitted.

22 MS. RATTAN: And may we publish it, your Honor?

23 THE COURT: Yes, you may.

24 (Audiovisual presentation to the jury.)

25

*

1 BY MS. RATTAN:

2 Q. Okay. So let me direct your attention to the
3 transcript of the call. It's Government's Exhibit 75.

4 MS. RATTAN: If we can publish that.

5 BY MS. RATTAN:

6 Q. So as you've said, the date is January 29th of 2020;
7 and, of course, you're identified and the agent who you are
8 talking to is Keith Todd Ashley.

9 A. Yes. Yes, it is.

10 Q. And you're able to realtime verify that that's an agent
11 with Midland life at the time that the call comes in?

12 A. Absolutely. We have agent codes and we pull up their
13 code with our systems and it will verify what standing they
14 are in. And if it's their policy and they're active, we're
15 able to assist them.

16 Q. And he tells you his name and his agent code.

17 A. Uh-huh.

18 Q. And then he tells you what he's calling about. He
19 says, line 25, "to submit a change of beneficiary form."

20 He's talking about one of his clients wanting to
21 submit a change of beneficiary; is that right?

22 A. Yes, it is.

23 Q. And he says that they have tried faxing it, the client
24 tried to fax it, he tried to fax it?

25 MS. RATTAN: And if we can look at 75, page 2,

1 lines 9 and 10.

2 BY MS. RATTAN:

3 Q. It says, "I just want to make sure it's in the system."

4 He wants to make sure it's in place. Is that your
5 understanding?

6 A. Yes, ma'am.

7 Q. And then he tells you who the client is on lines 12 and
8 13.

9 A. Yes.

10 Q. "Last name is Seegan." He spells it out. And he says,
11 "First name is James"; is that right?

12 A. Yes, it is.

13 Q. And then he tells you exactly what the -- what's going
14 on on lines 19 and 20 -- I guess 18, 19, and 20.

15 A. Correct.

16 Q. He says, "It's for a \$2 million policy. He's changing
17 the beneficiary to his trust."

18 A. Correct.

19 Q. He tells you exactly what he's trying to do there.

20 A. Right.

21 Q. And then if we can look on that same page, 75, page 2,
22 at the very bottom, lines 24 and 25. You say, "Let's take
23 a peek here."

24 And then you tell him that it's what?

25 A. It's been completed.

1 Q. So as of this morning -- and if we page down you say,
2 "It has been completed as of this morning."

3 And then he asks you, on line 4, "It is in good
4 order" -- he wants to know if it's in good order.

5 And you say, "Everything's done."

6 MS. RATTAN: And if we can look at lines 6 through
7 9.

8 BY MS. RATTAN:

9 Q. "Everything's done. James E. Seegan" --

10 He says, "Oh, okay."

11 And you say (as read): "The revocable
12 testamentary trust is 100 percent the primary beneficiary."

13 So you confirmed that for him in this call on
14 January 29th of 2020?

15 A. Yes.

16 Q. And then on lines 15 and 16, you tell him that a
17 confirmation letter is generating.

18 What is that?

19 A. Anytime there is a change to a policy, regardless of
20 what type of change it is, a confirmation letter will
21 always generate just confirming what has happened; and it
22 goes to the policy owner.

23 And that way if for some reason it's not what they
24 wanted or there is a typo, they have a chance to review it
25 and we can always make corrections. But it's just to

1 confirm the change has been made.

2 Q. So here we are. You're taking a call from the agent,
3 Keith Ashley and it's January 29th of 2020 and you're
4 telling him it's a done deal, it's in place.

5 A. Uh-huh.

6 Q. And what's in place is that the \$2 million life policy
7 for James Seegan, the beneficiary is now the trust?

8 A. Correct.

9 MS. RATTAN: I'll pass the witness.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION OF JENNIFER BAUMAN

12 BY MR. WHALEN:

13 Q. Ms. Bauman, good afternoon. How are you?

14 A. I'm good.

15 Q. Just a couple questions just to go over the fact
16 that -- you said a letter was being generated that day,
17 correct?

18 A. Uh-huh.

19 Q. You have to say "yes." Sorry.

20 A. Oh, I'm sorry. Yes.

21 Q. And so a letter would get generated and get mailed out
22 that day, correct?

23 A. Correct.

24 Q. And that was on January 29th of 2020?

25 A. It should have been. The only caveat -- and this is

1 something I typically would say when something is being
2 generated. When we do our confirmation letters, they will
3 come back to us. We will review them for accuracy. If we
4 have a typo and notice it, we may regenerate the letter.

5 Q. Okay.

6 A. And so it might have another day or so date, but that's
7 why we keep it pretty vague about when we're going to send
8 it.

9 But if -- I have not seen the confirmation letter
10 to confirm when it was generated.

11 Q. Okay.

12 A. That's my only caveat.

13 Q. Okay. Fair enough.

14 But it's not going to take months or weeks for
15 that letter to go out, correct?

16 A. Oh, heavens, no.

17 Q. Okay. What is the standard turnaround time for a
18 letter to be generated and mailed, on average, at Midland
19 National?

20 A. Well, as soon as you make the change, the confirmation
21 letter is the next step.

22 Q. Okay.

23 A. And so it shouldn't take long at all.

24 Q. And is it your job as the customer care to review that
25 letter, or does it go to the a different department?

1 A. Those that work remotely have to rely on in-house
2 people to review it for you; and if they have questions,
3 they send it to you and say, "Hey, will you review this?"

4 If you work in-office, then you get your own mail
5 back. You stuff it in the envelope. You review it,
6 everything, and it goes out.

7 Q. Okay. Were you working in-office on January 29th of
8 2020?

9 A. I was remote.

10 Q. You were remote, okay.

11 Where were you when you took the call?

12 A. I was at my home in Sioux Falls.

13 Q. Okay. So you were still in South Dakota?

14 A. Oh, yeah.

15 Q. Okay. And when that letter is generated, it comes by
16 email to you? How does it --

17 A. I -- well, I didn't make any changes. I just confirmed
18 that it was being made.

19 And I couldn't see it in the file. But because of
20 our procedures, once the change is made, the confirmation
21 letter generates; and then it goes.

22 Q. Okay.

23 A. So trusting that the process is normal, it should have.

24 Q. Gone immediate?

25 A. Uh-huh (moving head up and down).

1 Q. Okay. Fair enough.

2 And, once again, everything is recorded, correct?

3 A. Everything is recorded.

4 Q. Every agent knows that, correct?

5 A. Yeah. Yeah, they know.

6 Q. And every agent knows that mail is going to be
7 generated to go to the owner of the policy?

8 A. Absolutely.

9 Q. Okay. And the reason -- I think what you alluded to is
10 the reason why that letter is generated is then the policy
11 owner can get the letter, review it to make sure the
12 changes are in accordance with their wishes, correct?

13 A. Yes.

14 Q. Or if they are not, then they would reach back out to
15 you all and say, "Hey, I need to make a change" or "I
16 didn't want to do this," correct?

17 A. Right, or maybe "This wasn't the request I made."

18 Q. Okay.

19 A. You know, we can always review why and fix it.

20 Q. Okay.

21 MR. WHALEN: I'll pass the witness.

22 Thank you very much.

23 THE COURT: Anything additional?

24 MS. RATTAN: No, your Honor.

25 THE COURT: Can this witness be fully excused?

1 MS. RATTAN: Yes, please.

2 THE COURT: Mr. Whalen?

3 Mr. Whalen, can the witness be excused?

4 MR. WHALEN: Oh, yeah. Absolutely.

5 THE COURT: Okay. Ma'am, you are free to leave.

6 Thank you.

7 THE WITNESS: Oh, I'm so sorry. Thanks.

8 THE COURT: No, you're fine.

9 What's next?

10 MS. RATTAN: The United States calls Courtney
11 Jacobson.

12 THE COURT: Ma'am, if you'll raise your right hand
13 and be sworn in.

14 (The oath is administered to the witness.)

15 THE COURT: Go ahead and proceed.

16 MS. RATTAN: Thank you, your Honor.

17 DIRECT EXAMINATION OF COURTNEY JACOBSON

18 CALLED ON BEHALF OF THE GOVERNMENT

19 BY MS. RATTAN:

20 Q. Please state your name.

21 THE COURT: Will you turn your mic on, Ms. Rattan?

22 MS. RATTAN: Oh, pardon me, your Honor.

23 BY MS. RATTAN:

24 Q. Please state your name.

25 A. Courtney Jacobson.

1 Q. And where do you work?

2 A. Midland National Life Insurance.

3 Q. And what's your position with Midland National Life
4 Insurance?

5 A. I am the AVP, associate chief underwriter.

6 Q. And what does that mean?

7 A. I lead the underwriting production teams that
8 underwrite the cases for life insurance.

9 Q. What does it mean to be an insurance underwriter? What
10 is that?

11 A. Essentially, an insurance underwriter is someone that
12 assesses the risk of the insured. So we look at blood,
13 urine, and determine the price of the ultimate policy.

14 Q. And determine the price of the policy?

15 A. The risk of the policy. Excuse me.

16 Q. The risk of the policy.

17 A. Uh-huh.

18 Q. Okay. What is your background and training that
19 qualifies you to be an insurance underwriter at Midland
20 life?

21 A. I started with Midland National about 16 years ago as
22 an underwriting trainee and Midland National trained me as
23 a trainee and we met with many medical directors, had
24 significant training in anatomy and physiology, and then
25 ultimately did, you know, case studies throughout it to

1 learn how to underwrite.

2 I also am essentially certified as an underwriter.

3 I have many designations, one of which is the Fellow,

4 Academy of Life Underwriting, which is similar to a

5 master's in underwriting.

6 Q. Okay. So you have a master's, essentially, in

7 underwriting. What's your undergraduate education?

8 A. I am -- I got a B.A. at University of South Dakota in

9 audiology and Spanish -- audiology, speech language

10 pathology, and Spanish.

11 Q. Okay. Audiology, speech pathology, and Spanish?

12 A. Correct.

13 Q. Now, let me ask you. We just heard from Jennifer

14 Bauman who used to work at Midland life; is that right?

15 A. Correct.

16 Q. And we've been listening to phone calls that came in on

17 the Midland life recorded line, which is standard. Midland

18 life records calls; is that right?

19 A. Correct.

20 Q. Let me direct your attention to a transcript and a

21 phone call that we just reviewed.

22 MS. RATTAN: If we can look at Government's

23 Exhibit 75, page 2.

24 MR. WHALEN: Your Honor, may we approach briefly?

25 THE COURT: Yes.

1 (Sidebar conference, off the record.)

2 MR. WHALEN: Your Honor, for the record, we object
3 under 702, a lack of notice.

4 THE COURT: Well, she hasn't really stated any
5 opinions; so I'll overrule the objection. There is nothing
6 to object to yet so --

7 MR. WHALEN: Okay.

8 THE COURT: Go ahead, Ms. Rattan.

9 MS. RATTAN: Okay. If we can look at 75, page 1,
10 first at the heading at the top, the date and the
11 participants.

12 BY MS. RATTAN:

13 Q. So this is a call that comes in to Midland life on
14 January 29th of 2020, and then Jennifer Bauman is the
15 Midland life employee and Keith Todd Ashley is the agent
16 calling in.

17 So at the bottom of 75, page 1, they are talking
18 about a beneficiary form, right here. That's the subject
19 of the call.

20 MS. RATTAN: And then if we can go to page 2 and
21 look at lines 11 through 14.

22 BY MS. RATTAN:

23 Q. (As read): "And the client's policy -- the last name
24 is Seegan." He spells it. "And the first name is James."

25 So they're talking about James Seegan's policy and

1 the beneficiary change on it, and then they talk exactly
2 about what it will be on lines 17 through 20.

3 Okay. So Ashley, agent, says, "It's for a
4 \$2 million policy. He's changing the beneficiary to his
5 trust."

6 So you're an underwriter with Midland life.

7 A. Uh-huh (moving head up and down).

8 Q. And an agent calls in. The agent is Keith Ashley. And
9 it's January 29th of 2020; and he's saying that the client,
10 James Seegan, is changing the beneficiary of his \$2 million
11 life policy to his trust.

12 So would it be important to Midland life to know
13 whether the agent, Keith Ashley, is the executor of that
14 trust that's now going to be the beneficiary of the
15 \$2 million?

16 A. Yes.

17 Q. Okay. Why is that important to know? Why would
18 Midland life care about that?

19 A. Because it's a conflict of interest to have -- be
20 involved in a trust and on a policy.

21 Q. And I know it's hard, but can you speak closer --

22 A. Oh, sorry.

23 Q. -- to the microphone?

24 A. Because it's a conflict of interest.

25 Q. And you said "conflict of interest." As the

1 underwriter for Midland life, what do you mean by that?

2 A. You want to look at the insurability of anyone that
3 would get the proceeds of a life insurance policy.

4 Q. If Keith Ashley, the agent calling in on January 29th
5 of 2020, had said in this call or in a letter or a fax or
6 any communication with Midland life, "I am the executor of
7 this trust that's going to be the beneficiary of the
8 \$2 million life policy," what would have happened? What
9 would Midland life have done?

10 A. We wouldn't have allowed it.

11 Q. And --

12 A. We would have asked a couple of more questions and
13 essentially not allowed it.

14 Q. Okay. Because it's a conflict of interest --

15 A. Correct.

16 Q. -- as you say?

17 A. Uh-huh.

18 Q. If he had told you that he was the executor of the
19 will, would that have been a concern to Midland life?

20 A. Yes.

21 Q. And why is that?

22 A. For the same reasoning, because it's a conflict of
23 interest.

24 Q. Let me direct your attention to Government's

25 Exhibit 71.

1 MS. RATTAN: If we can look at page 2.

2 BY MS. RATTAN:

3 Q. This is a Beneficiary Change Request with Midland
4 National Life Insurance Company; and it's for the insured
5 who we were just talking about from the January 29th, 2020,
6 call. It's James E. Seegan. And that's the policyholder,
7 is that right, the insured?

8 A. That's correct.

9 Q. And then let me direct your attention to Government's
10 Exhibit 71, page 4.

11 Okay. This is the, again, Beneficiary Change
12 Request. If you can tell us as an underwriter what's going
13 on over here on the left side of the page.

14 A. That is where they list the change to the beneficiary
15 to be a James E. Seegan Revocable Trust.

16 And then it looks like the agent initialed and
17 dated the form.

18 Q. Now, again, if Midland life had known that Keith Ashley
19 was the beneficiary of this James E. -- or the trustee,
20 rather, of this revocable trust, would you have approved
21 this change?

22 A. No.

23 MS. RATTAN: And then let's look at Government's
24 Exhibit 71, page 5.

25

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1 BY MS. RATTAN:

2 Q. This is another section of the beneficiary change form.
3 What's going on here? Can you explain this portion of the
4 form to us?

5 A. This is the signature page where they date and sign.

6 So it has the owner's signature and then the
7 signature of the spouse, Sakdida.

8 Q. Okay. So this purports to be the owner's signature on
9 January 24th of 2020; and then this says the owner's
10 spouse, which is required --

11 A. It does.

12 Q. -- in these states; and Texas is one of them?

13 A. Correct.

14 Q. And it purports to be the signature of the spouse of
15 the owner of the policy?

16 A. Correct.

17 Q. If Midland life believed that this was a forged
18 signature, would you, as an underwriter on behalf of
19 Midland life, have concerns?

20 A. Yes.

21 Q. Explain that.

22 A. Essentially, it's misrepresentation of the contract and
23 the form; and so we would have the right to decline and/or
24 contest.

25 Q. So if Midland life knew that this was a forged

1 signature, this wouldn't go through?

2 A. Correct.

3 Q. If Midland life knew that the agent, Keith Ashley, was
4 the executor of the trust or the will, it wouldn't go
5 through?

6 A. Correct.

7 Q. Conflict of interest?

8 A. Yes.

9 Q. Potentially fraud?

10 A. Yes.

11 Q. Why do you say that, potentially fraud?

12 A. Essentially, any forged signature on a form within the
13 contract would be fraud.

14 Q. Now, in the calls that have been played for the jury
15 this afternoon that the Midland life employees have
16 testified to receiving, there have been representations
17 made that the policyholder, the insured, James Seegan, was
18 calling in to Midland life, too, and that he wanted to make
19 sure that this happened.

20 Has Midland life -- and, of course, among your
21 duties you're a custodian of the records at Midland life.

22 A. Uh-huh.

23 Q. Has Midland life reviewed its records to determine
24 whether James Seegan called in to check on this change?

25 A. We were not able to tie the numbers with James Seegan's

1 numbers, so no.

2 Q. So you've checked, and you haven't been able to find
3 any --

4 A. Recover any calls, correct.

5 Q. From James Seegan on your recorded lines.

6 What is the 800 number that someone would call in
7 on Midland life?

8 A. I don't know that offhand.

9 Q. If I called it out, would you recognize it?

10 A. Probably not.

11 Q. Oh, okay.

12 A. There's many.

13 Q. Okay.

14 A. You could try.

15 Q. Okay.

16 A. I'll give you my honest opinion.

17 Q. All right. Well, 800-843-3316.

18 A. I would say typically our numbers start with 866 or
19 877.

20 Q. Okay. That's --

21 A. So that doesn't sound familiar.

22 Q. Okay. That's not one that you recognize?

23 A. Correct.

24 Q. Let's talk about a blood draw as part of the life
25 insurance process.

1 Is that part of it?

2 A. It is.

3 Q. Explain that to the jury.

4 A. Yeah. So when individuals apply for life insurance,
5 they have to show that they are insurable from a medical
6 perspective. So we take blood to look -- and an
7 underwriter will review the blood to give them the rating
8 or risk classification.

9 Q. And that's an important part of the process?

10 A. It is.

11 Q. And is a beneficiary change like what we're looking at
12 here that we just reviewed, Government's Exhibit 71 -- is a
13 new blood draw required to change the beneficiary?

14 A. Not to change the beneficiary, only if there were
15 changes to the policy.

16 Q. So it wouldn't be required?

17 A. Correct.

18 Q. Now, let's say that your agent, your registered agent
19 for Midland life -- in this case Keith Ashley -- is a
20 registered nurse.

21 A. Uh-huh.

22 Q. I know you said that a blood draw is not required. But
23 if it were a situation where a blood draw was required,
24 where there is a change in the amount in the policy or a
25 new policy, would it be appropriate for your agent to do a

1 blood draw on the insured?

2 A. No. Again, that would be a conflict of interest
3 because you want an unbiased, neutral party taking the
4 blood that would qualify them for life insurance.

5 Q. And that's what you all would require?

6 A. Correct.

7 Q. And what type of third-party vendor do you-all use? Is
8 it standard to use a third-party vendor?

9 A. It is, yes.

10 Q. And how is that done?

11 A. It's a lab company. And, then, they have paramedical
12 vendors where phlebotomists get registered with and are
13 able to draw it on behalf of the lab company.

14 Q. And so an agent wouldn't be part of the blood draw
15 process?

16 A. No.

17 Q. Okay. But the client, the insured, wouldn't
18 necessarily know what Midland's procedure is; is that
19 right?

20 A. That's right.

21 Q. Now let me ask you. We've talked about the beneficiary
22 change on Mr. Seegan's policy and we've talked about what
23 was going on in late January of 2020, but let me back up
24 and talk about the original policies that Mr. Seegan had
25 and focus on what they were with Midland life.

1 And so this would be one of the policies that was
2 being changed in January of 2020.

3 MS. RATTAN: So, your Honor, we'll offer
4 Government's Exhibit 29A.

5 THE COURT: Any objection?

6 MR. WHALEN: I'm looking, Judge.

7 No objection, your Honor.

8 THE COURT: 29A will be admitted.

9 BY MS. RATTAN:

10 Q. So as we saw in the call, there is a \$2 million life
11 policy that James Seegan has in January of 2020. But let's
12 focus on where -- or when that \$2 million life policy came
13 to be.

14 So let me direct your attention to Government's
15 Exhibit 29A.

16 MS. RATTAN: If we can look at pages 190 through
17 198.

18 BY MS. RATTAN:

19 Q. Can you describe for us -- and this is 29A,
20 government's exhibit, 190 -- what this is?

21 A. This is the application for life insurance.

22 Q. So it's the original application; and it has James
23 Seegan, first name, last name.

24 A. Correct.

25 Q. And it's got all of his personal identifiers, date of

1 birth and where he lives in Carrollton, Texas, and
2 everything that you would expect to see on the original
3 application; is that right?

4 A. That is correct.

5 MS. RATTAN: And then if we can look at page 198.

6 BY MS. RATTAN:

7 Q. And what is this?

8 A. This is the final page of the application, where the
9 insured, James Seegan, signed with a date in Carrollton,
10 Texas.

11 Q. And so that would be January 26th of 2016?

12 A. Correct.

13 Q. And then you've got the insured's signature here, James
14 Seegan.

15 And then at the bottom of the page, does it show
16 who the agent is?

17 A. It does. It says "Signature of Soliciting Agent"; and
18 then it says "Keith Ashley," the agent.

19 Q. Okay. So Keith Ashley is the agent?

20 A. Correct.

21 Q. Now, of course, as an underwriter for Midland life, are
22 you all concerned about the health of the insured?

23 A. Yes.

24 Q. And do you evaluate that as part of the process in
25 determining whether to issue the policy, how much the

1 policy will cost, all of those sorts of things?

2 A. We do.

3 Q. And did you all do that in this case?

4 A. We did.

5 Q. Let me direct your attention to Government's

6 Exhibit 29A, pages 75 and 76.

7 What is this?

8 A. This is the actual policy that was issued. So it's the
9 policy pages.

10 Q. And when you say "the actual policy that was issued,"
11 what do you mean by that?

12 A. This is the policy that goes out to the agent presented
13 on -- or presented by the agent to the client so that they
14 can have their policy.

15 MS. RATTAN: And then if we can look at page 76.

16 BY MS. RATTAN:

17 Q. What's going on here?

18 A. This essentially is the contract language regarding the
19 policy, but it shows the type of policy. So it was an
20 indexed universal life; premium class, preferred,
21 non-tobacco.

22 The amount -- or the face amount of the policy was
23 \$2 million.

24 And then it kind of just goes through the outlay
25 of the planned premium and some of the guarantees in the

1 contract language.

2 Q. So let me ask you about this right here, the "premium
3 class, male preferred, non-tobacco."

4 Can you kind of explain, for people who aren't
5 involved in insurance, what that means?

6 A. Yes. So I would say standard non-tobacco is the
7 majority of where the population lies. It's a really
8 standard mortality class.

9 Preferred non-tobacco is a better-than-standard
10 class, so they are healthier than the average person.

11 Q. So Mr. Seegan is someone you want to insure?

12 A. Correct.

13 Q. He looks like a good -- someone who is good and
14 healthy?

15 A. Yeah.

16 Q. As a matter of fact, healthier than the average
17 population?

18 A. Correct.

19 Q. And then this here, on Government's 29A, page 76,
20 initial specified amount, what is that?

21 A. That is the -- what we issued the policy. So that's
22 the policy face amount, and it says "\$2 million."

23 Q. So he's very healthy, and the policy is for how much?

24 A. \$2 million.

25 Q. And so is this the policy -- flash-forward -- I know

1 here we're in 2016, but flash-forward to 2020. Is this the
2 policy that's being changed, the beneficiary is being
3 changed?

4 A. I don't recall if it's --

5 Q. So let me ask you --

6 MS. RATTAN: If we can look at Government's
7 Exhibit 29A, page 104.

8 BY MS. RATTAN:

9 Q. And this has the initial specified amount as well; is
10 that right?

11 A. Correct.

12 Q. So that's the -- what is that?

13 A. That's the \$2 million face amount.

14 MS. RATTAN: And then if we can look at
15 Government's Exhibit 29A, page 55.

16 BY MS. RATTAN:

17 Q. What is this?

18 A. It looks like --

19 Q. Okay. Go ahead.

20 A. It just looks like a cover page that goes into our
21 imaging system.

22 Q. Okay. And I misspoke.

23 MS. RATTAN: Government's Exhibit 29A, page 155.

24 BY MS. RATTAN:

25 Q. Here, is this part of the policy; and as part of the

1 \$2 million policy, is there a suicide clause?

2 A. There is. This is part of the contract language that
3 goes in all of our policies, and it outlines the suicide
4 clause that we do not pay out the policy if there is any
5 suicide within the first two years of issuance of the
6 policy.

7 MS. RATTAN: And so if we can just blow that
8 suicide clause up and look at that.

9 BY MS. RATTAN:

10 Q. So you said (as read): "If the insured commits suicide
11 within two years from the effective date of any increase in
12 the specified amount, our liability with respect to such
13 increase is limited to the cost of the insurance charged
14 for such increase."

15 A. Correct.

16 Q. So what does that mean?

17 A. That means that we would pay back the policy premiums
18 that the insured paid to our company but we would not pay
19 the death benefit.

20 Q. Okay. You give the premiums back, but there is no
21 benefit?

22 A. Correct.

23 Q. But if it's outside of the two years, what happens?

24 A. Then that clause no longer exists. Then we would
25 investigate it just as a normal claim, or handle the claim.

1 Q. Now let me direct your attention, focusing still on
2 Government's Exhibit 29A, to page 1687.

3 MS. RATTAN: 1687.

4 BY MS. RATTAN:

5 Q. And what is this?

6 A. This is the beneficiary change form.

7 Q. And we looked at this earlier when we were looking at
8 Government's Exhibit 71, is that right, earlier in your
9 testimony?

10 A. Correct.

11 Q. So this is the Midland life record that documents the
12 Beneficiary Change Request on this \$2 million life policy
13 that we have just reviewed from 2016?

14 A. Correct.

15 Q. So, again, is there a requirement of another blood draw
16 in order to do a beneficiary change?

17 A. There is not.

18 Q. And if Midland life knew that the agent was the
19 executor or in any way involved with the trust that was
20 going to be the beneficiary of the \$2 million, would this
21 have been approved?

22 A. No.

23 Q. So this is the beneficiary change.

24 MS. RATTAN: And if we can look at 29A, page 1691.

25

*

1 BY MS. RATTAN:

2 Q. What is this?

3 A. This is a Certification of Trust Agreement that
4 outlines the name of the insured and then the full name of
5 the trust, the effective date; and then, yeah, there is,
6 you know, a signature and a date recording a testamentary
7 trust.

8 Q. So the effective trust date is listed as April 16th of
9 2019?

10 A. Correct.

11 Q. And the insured is James Seegan and the trust is going
12 to be the beneficiary and it's the James E. Seegan
13 Revocable Trust?

14 A. Correct.

15 Q. Now let me direct your attention to page 1693,
16 Government's 29A, page 1693.

17 This is a letter and it's dated January 29th of
18 2020 and it's sent to James Seegan at his address there in
19 Carrollton, Texas, and it's about the policy number -- his
20 policy.

21 And so can you explain to us what's happening
22 here?

23 A. Yes. It's a letter that the claims department sent out
24 to James E. Seegan thanking him for the request to change
25 the beneficiary designation and an endorsement -- this is

1 essentially an endorsement that goes into the policy that
2 shows that we changed the beneficiary as outlined on that
3 form.

4 Q. Okay. And, again, that's sent on January 29th of 2020;
5 and it's to Mr. Seegan.

6 And who is copied on it?

7 A. Keith T. Ashley.

8 Q. And he is the agent; is that right?

9 A. Correct.

10 MS. RATTAN: May I approach the witness, your
11 Honor?

12 THE COURT: Yes.

13 BY MS. RATTAN:

14 Q. Let me show you this. It says, "January 9th of 2020."
15 And it says a letter was sent confirming the change of
16 beneficiary in James Seegan's trust to Ashley.

17 A. Correct.

18 Q. Is that accurate?

19 A. Yep.

20 Q. Now, we just went through the original documents
21 related to the creation of the \$2 million policy originally
22 in January of 2016; is that right?

23 A. Can you repeat that question?

24 Q. Yes.

25 MS. RATTAN: May I approach?

1 THE COURT: Yes.

2 BY MS. RATTAN:

3 Q. In Government's Exhibit 29A that we just walked
4 through --

5 A. Okay.

6 Q. -- we talked about when Mr. Seegan's policy was
7 originally created, and that would have been in 2016; is
8 that right?

9 A. Correct.

10 Q. And then there was an update to it in the documents.
11 And we didn't walk through this, but I think it's in the
12 documents of --

13 A. Yeah.

14 Q. -- February 25th of 2016.

15 Have you reviewed these dates as it relates to
16 Government's Exhibit 29A?

17 A. I have.

18 Q. Okay. And does it -- do they show -- the documents
19 show that Ashley, Keith Ashley, sold James Seegan
20 originally a \$1.1 million life insurance policy and then in
21 February of 2016 it was increased and that's the \$2 million
22 life policy that we've been talking about?

23 A. Correct.

24 Q. Okay. Is this accurate?

25 A. Yes, it's accurate. Correct.

1 Q. Okay. So here we have, in 2016, your agent sells James
2 Seegan -- originally it's a million dollars, and then it's
3 increased to \$2 million; is that right?

4 A. That is right.

5 Q. And then unknown to you, Ashley becomes the independent
6 executor of James Seegan's will and trust, James Seegan who
7 you all sold the \$2 million life policy?

8 A. Correct.

9 Q. And Ashley is your representative, Midland life's
10 representative; is that right?

11 A. He is an agent that was contracted, yes.

12 Q. Okay, contracting agent.

13 A. Uh-huh.

14 Q. Then in January of 2020, you all, Midland life, send a
15 letter, and that confirms that the beneficiary of the
16 \$2 million is now the trust for James Seegan; is that
17 right?

18 A. That is right.

19 Q. Okay. But Midland life doesn't know this important
20 fact.

21 A. Correct.

22 Q. And that's that Keith Ashley is now the executor of the
23 trust that's going to be the beneficiary of the \$2 million.

24 A. Correct.

25 MS. RATTAN: Now let's go back to Government's

1 Exhibit 29A; and if we can look at page 917, 9-1-7.

2 BY MS. RATTAN:

3 Q. Can you explain to the jury what this is?

4 A. This is the check that was being paid out to the
5 James E. Seegan Revocable Trust for \$2 million.

6 Q. And so it's paid out on May the 13th -- the check is
7 dated May 13th of 2020?

8 A. Correct.

9 Q. And it's to -- just as the paperwork indicates that was
10 finalized in late January of 2020, that the James E. Seegan
11 Revocable Trust is going to receive the money?

12 A. Correct.

13 Q. And then the amount here is over \$2 million that was
14 paid out?

15 A. It is, yes.

16 Q. Why did Midland life pay out over \$2 million on this
17 policy?

18 A. It's generally having to do with interest on the type
19 of policy that was issued.

20 Q. So the policy was for 2 million, but it gained
21 interest --

22 A. Correct.

23 Q. -- and so you paid out more?

24 A. Yes.

25 Q. And why did you have to pay out \$2 million plus

1 interest?

2 A. Because the insured passed away and that was a part of
3 our contract.

4 Q. Okay. Now, if Midland life had known that Keith Ashley
5 was involved as the executor of the trust, would you ever
6 have approved this?

7 A. No.

8 Q. So is it a concern to you that Midland life had to pay
9 out this money to the revocable trust that Keith Ashley was
10 the executor of?

11 A. Yes.

12 Q. And why is that?

13 A. Because there -- again, it is a conflict of interest
14 and it's against our compliance as an organization.

15 Q. So let me ask you -- let's leave the \$2 million policy
16 for a minute.

17 A. Okay.

18 Q. And let's talk about did James Seegan have another life
19 insurance policy with Midland life?

20 A. He did.

21 Q. There was a second policy?

22 A. There was a second policy.

23 Q. And have you reviewed Midland life's records and
24 documents as they relate to the second policy?

25 A. I have.

1 Q. And was that second policy ultimately for \$400,000?

2 A. Yes, it was.

3 Q. Let me direct your attention to Government's

4 Exhibit 29A.

5 MS. RATTAN: If we can look at pages 1164, start

6 at 1164.

7 BY MS. RATTAN:

8 Q. Okay. Can you describe for us what this is?

9 A. This is the life insurance application.

10 MS. RATTAN: And if we can look at 1172.

11 BY MS. RATTAN:

12 Q. That's for James Seegan; is that right?

13 A. That is correct. It's the signature pages with the
14 agent and the applicant both signing.

15 Q. And again the registered soliciting agent is Keith
16 Ashley on this policy as well?

17 A. Correct.

18 Q. And this policy was also initiated in 2016; is that
19 correct?

20 A. That is correct.

21 MS. RATTAN: And if we can look at 1063,
22 Government's Exhibit 29A, page 1063.

23 BY MS. RATTAN:

24 Q. What is this?

25 A. This is the policy pages again of the issued policy

1 that go out to the applicant.

2 Q. Okay. So a "policy page," what does that mean?

3 A. It's essentially the contract that outlines the
4 provisions of the policy, the details of what we issued the
5 policy and all the exclusions, the suicide exclusion, all
6 of that within there.

7 Q. Okay. And it's the same as the previous policy?

8 A. Yes, it's the same.

9 MS. RATTAN: So if we can look at page 1064.

10 BY MS. RATTAN:

11 Q. Again, can you tell us what the amount is for this
12 policy?

13 A. This policy was for a million dollars, and again --
14 yeah, a million dollars.

15 Q. Now, was this policy -- in the next couple of years
16 after it was initiated, was it reduced?

17 A. It was.

18 Q. So was this policy reduced from a million dollars to
19 \$400,000?

20 A. Yes.

21 Q. Now, this policy, the beneficiary of the policy was not
22 a trust; is that right?

23 A. That is correct.

24 Q. The beneficiary of this policy was Mr. Seegan's wife.

25 A. Correct.

1 Q. And her name was Sakdida Seegan.

2 A. Correct.

3 MS. RATTAN: Let's look at Government's
4 Exhibit 29A, page 1455.

5 BY MS. RATTAN:

6 Q. If you can tell us what this is.

7 A. This is email correspondence that is asking -- it is
8 email correspondence from Keith Ashley to individuals in
9 our office asking for an in-force illustration for the
10 amounts of 400,000 and 695,000.

11 Q. And he's saying that he needs them as soon as possible?

12 A. Correct.

13 Q. And eventually this policy that we're talking about,
14 the second policy, was reduced to 400,000; is that right?

15 A. That is right.

16 MS. RATTAN: And if we can look at 1456.

17 BY MS. RATTAN:

18 Q. And what's happening here?

19 A. There was email correspondence because there were some
20 emails that they wanted to lower the policy even more, to
21 200- or 275- and we weren't able to do that.

22 Q. Okay. So the lowest that you-all were able to go on
23 the second policy was 400,000?

24 A. Correct.

25 MS. RATTAN: And if we can look at 1563, 29A,

1 1563.

2 BY MS. RATTAN:

3 Q. So what happens here finally?

4 A. This is an endorsement page that goes out on the policy
5 to -- and it shows the owner's name, which is James Seegan,
6 issued on the life of James Seegan, and then the changed
7 coverage amount to 400,000.

8 And so we changed the policy. It's a confirmation
9 of changing the policy.

10 Q. Okay. And that's as of December 16th of 2018?

11 A. Correct.

12 Q. And the beneficiary on this policy is Sakdida Seegan?

13 A. Correct.

14 MS. RATTAN: Now if we can look at 29A, page 1119.
15 1119.

16 BY MS. RATTAN:

17 Q. Does this second policy also have a suicide clause?

18 A. Yes, it does.

19 Q. And you've said that it's very standard?

20 A. Yes.

21 Q. And it's the same thing. If the suicide happens within
22 two years, the only payout will be for the premiums paid?

23 A. Correct.

24 Q. Otherwise, nobody gets \$400,000?

25 A. Correct.

1 Q. And so the \$400,000 on the second policy became
2 effective on December 16th of 2018?

3 A. Correct.

4 Q. Let me direct your attention to 29A, page 1631.

5 Can you explain to the jury what this is?

6 A. Yes.

7 This is the check for the claim that was paid to
8 the order of the beneficiary, Sakdida Seegan, for
9 \$400,158.74.

10 Q. And again the policy value was \$400,000; but you paid
11 extra because of interest?

12 A. Correct.

13 Q. And then the same question. Why was Midland life
14 forced to pay \$400,000?

15 A. Because the insured passed away and a claim was filed
16 on behalf of the insured to receive the funds of the life
17 insurance.

18 MS. RATTAN: May I approach the witness, your
19 Honor?

20 THE COURT: Yes.

21 BY MS. RATTAN:

22 Q. Now, we've been talking about the second policy on
23 James Seegan's life. Earlier we talked about the first
24 policy, the \$2 million policy; but now we're talking about
25 the second policy.

1 And let me ask you to look at this. On March 9th
2 of 2016 Keith Ashley, the agent, sold James Seegan a
3 \$1 million life policy; and Seegan's wife, Sakdida Seegan,
4 was the beneficiary?

5 A. Correct.

6 Q. Okay. And then on December 16th of 2018, the policy
7 was reduced. They wanted to reduce it lower; but the
8 lowest that Midland life would go was to \$400,000?

9 A. Correct.

10 Q. And so this is accurate?

11 A. That is accurate.

12 MS. RATTAN: I'll pass the witness, your Honor.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION OF COURTNEY JACOBSON

15 BY MR. WHALEN:

16 Q. Is it "Ms. Jacobson"?

17 A. Yes, sir.

18 Q. Good afternoon. How are you?

19 A. I'm good.

20 Q. Good. I'm James Whalen. Nice to meet you.

21 A. Nice to meet you.

22 Q. Okay. Just -- I want to go over your -- I heard some
23 of your qualifications. What job do you do at Midland
24 National?

25 A. I am the associate chief underwriter, so I lead the

1 underwriting teams.

2 Q. Okay. And so underwriting, you evaluate people's
3 insurability, use actuarial tables, correct?

4 A. We don't necessarily use actuary tables; we use
5 underwriting guidelines to assess the risk based off of the
6 data or the information that we receive.

7 Q. Okay. And when you talk about assessing risk, when it
8 comes to life insurance companies, you want to minimize
9 your risk, correct?

10 A. Correct.

11 Q. Okay. Because you -- at the end of the day, even
12 though you are agreeing to pay people money for their life
13 insurance, you want to make money at being a life insurance
14 provider, correct?

15 A. We are a life insurance organization, yes.

16 Q. Right. And you're there to make a profit, correct?

17 A. We're there to issue life insurance, yes. Yes.

18 Q. But you're there -- I mean, you don't do it for free,
19 right?

20 A. Correct.

21 Q. All right. And you want to minimize your risk, right?

22 A. Correct.

23 Q. Okay. Okay. And so when we talked -- you were asked a
24 bunch of questions about this beneficiary change, correct?

25 A. Correct.

1 Q. Okay. So -- and you've listened or read all the
2 transcripts for the phone calls, correct?

3 A. I have not listened or read all of them, no.

4 Q. Okay. In one of the transcripts or one of the calls,
5 one of the customer care persons made a statement to the
6 effect, "We go through these change of beneficiary requests
7 with a fine-toothed comb when it involves a trust,"
8 correct?

9 A. I didn't listen to that.

10 Q. Okay. But as an underwriter, if it's changed to a
11 trust, you're a little bit more -- you're more thorough in
12 vetting that change of beneficiary, correct?

13 A. If we're aware of it, yes.

14 Q. Okay. Well, if somebody fills out a form saying, "I
15 want to name a trust," you become aware of it, correct?

16 A. Not in this case, no.

17 Q. Okay. So it never went to underwriting?

18 A. It went through the claims department. Not that --

19 Q. Okay.

20 A. -- I'm aware of anyway.

21 Q. Okay. So as the -- senior vice-president?

22 A. AVP, assistant.

23 Q. Assistant vice-president?

24 A. Yes.

25 Q. Okay. Of underwriting?

1 A. Uh-huh.

2 Q. Do you train your claims people on change of
3 beneficiary forms when it comes to trusts?

4 A. I personally do not but, yes, there is training
5 regarding that, yes.

6 Q. Okay. And if somebody is wanting to change a life
7 insurance -- the beneficiary from an individual to a trust,
8 do you require the trust documents?

9 A. I'm not aware of that from their lens -- from an
10 underwriting lens, typically, no. We use the form.

11 Q. Okay. And so who created the form?

12 A. I am unaware of who created the form.

13 Q. Okay. All right.

14 MR. WHALEN: So if we can look at Exhibit 71,
15 page 6, please.

16 BY MR. WHALEN:

17 Q. Okay. Are you familiar with this form?

18 A. Yes. This looks familiar.

19 Q. Okay. Did you have any part of creating it or anything
20 like that?

21 A. No.

22 Q. Okay. And -- so let me ask you a few questions about
23 it. You see in this -- there is a section down here that
24 says "Name/Address of all current Trustee(s)."

25 Do you see that section?

1 A. I do.

2 Q. Okay. And that is blank on the form, correct?

3 A. That is correct.

4 Q. Okay. Is that something that should have been filled
5 out?

6 A. Typically when they are -- when they check the
7 testamentary trust, we do not require that information
8 because it's gathered upon the death of the insured, is my
9 understanding.

10 Q. Okay. So if you -- if it's a testamentary trust, you
11 don't require that information; is that correct?

12 A. Correct, not until --

13 Q. Okay. If we go down to the second half of it --

14 MR. WHALEN: How do I clear this? How do I clear
15 my --

16 Okay, great. Super.

17 BY MR. WHALEN:

18 Q. All right. Do you see the bottom half of this screen?

19 A. I do.

20 Q. Okay. There is a section: "The above referenced Trust
21 Agreement requires that: (Please Mark the appropriate
22 box.)" "all Trustees," "a majority of Trustees," "any
23 Trustee."

24 What is the purpose of that line?

25 A. Again, if it's a testamentary trust, all we need is the

1 information on the top piece of the form.

2 Q. Okay. And why do you make a distinction between a
3 testamentary trust versus any other trust?

4 A. I am not a legal expert. But on -- when it's a living
5 trust and the individual dies, our understanding is that we
6 obtain that information upon the death of the insured.

7 Q. Okay. Okay. And then you see Line Number 2 -- do you
8 see that?

9 A. I do.

10 Q. And it reads: "The insurance agent or any person
11 affiliated with the insurance agent is not a beneficiary of
12 the above referenced trust."

13 Do you see that?

14 A. I do.

15 Q. Okay. And that is blank, correct?

16 A. Correct.

17 Q. Okay. And is that required to be filled out for this
18 change of beneficiary form?

19 A. Not for the type of trust that was selected.

20 Q. Okay. And do you know the difference between a
21 beneficiary and a trustee?

22 A. I wouldn't be able to share that in great detail.

23 Q. Okay. But, I mean, do you know or have a general --

24 A. Yeah. A beneficiary essentially -- I mean, and a
25 trustee is there to execute on behalf of the trust

1 executor, I guess, if you will.

2 So essentially they are paying out to whatever the
3 beneficiary is of the trust. They have control of the
4 trust.

5 Q. Okay. Now, as a owner of an insurance policy --

6 MR. WHALEN: You can take that down. Thank you.

7 BY MR. WHALEN:

8 Q. If I buy an insurance policy, I'm an owner, correct?

9 If I'm the owner of the insurance policy, let's --

10 A. If you're the owner of the insurance policy, yes.

11 Q. Okay. As an owner, I get to decide who the beneficiary
12 is, do I not?

13 A. As the owner of the life insurance policy, yes.

14 Q. Okay. And that's why you make sure you send -- every
15 time there is a change in beneficiary, you make sure you
16 send a letter to the owner's address to make sure he made
17 the change, correct?

18 A. Correct.

19 Q. Okay.

20 MR. WHALEN: If we could, let's go to Exhibit 29A,
21 page 904, please.

22 BY MR. WHALEN:

23 Q. Do you see that on the screen there?

24 A. I do.

25 Q. Okay. And what is this we're looking at?

1 A. This is a form, the Proof of Death Claimant's
2 Statement. So essentially it's a form that outlines the
3 insured -- excuse me -- the name of the deceased and the
4 name of the beneficiary.

5 Q. Okay. And you see there that this claim is filed by
6 the trustee. Do you see that?

7 It says, "In what capacity do you file this
8 claim?"

9 A. I do see that.

10 Q. Okay. And it's listed as "Trustee," correct?

11 A. That is correct.

12 Q. Okay. And then they have to check the box that they
13 want to have a check issued; is that correct?

14 A. They do, a lump sum via check.

15 Q. Okay.

16 MR. WHALEN: If we can go to the next page,
17 please.

18 And the next one.

19 Okay. If we can stop right there.

20 BY MR. WHALEN:

21 Q. Is this the signature of the trustee who filed this
22 claim?

23 A. I don't know who that signature is.

24 Q. Okay. It's hard to read. Would you agree with that?

25 A. Agree.

1 Q. Okay.

2 MR. WHALEN: If we go to the next page.

3 BY MR. WHALEN:

4 Q. Okay. And what is this we're looking at?

5 A. I'm not familiar with this one.

6 Q. Okay. Well, let me just go over it. Does it have the
7 name of the undersigned trustee as Kerby Keller?

8 A. It does.

9 Q. Okay. And it's a notarized document that seems to
10 indicate that they are going to hold Midland National
11 harmless regarding any tax liability and things of that
12 nature, correct?

13 A. I haven't read the form.

14 Q. Okay. You're not familiar with it?

15 A. I'm not familiar with it, no.

16 Q. Okay.

17 MR. WHALEN: If we could go to the next page.

18 BY MR. WHALEN:

19 Q. And they provided a Death Certificate, correct?

20 A. Correct.

21 Q. Okay.

22 MR. WHALEN: You can take that down.

23 I think we -- well, let me go to 29A, page 155. I
24 think that -- hopefully I did this right.

25 Nope, that's not it. Let's try 1687.

1 MS. RATTAN: Mr. Whalen, what number?

2 MR. WHALEN: What number is the check? Do you
3 remember?

4 MS. RATTAN: The first one or second one?

5 MR. WHALEN: First one.

6 MS. RATTAN: 917.

7 MR. WHALEN: 917?

8 MS. RATTAN: Yes, sir.

9 MR. WHALEN: Could you go to that page.

10 BY MR. WHALEN:

11 Q. Okay. So this is the check that got issued, correct?

12 A. Correct.

13 Q. Okay. And the date of the check is May 13th, 2020?

14 A. Correct.

15 Q. And it went to the trust; and the address is in
16 Pennsylvania, correct?

17 A. Correct.

18 Q. And if we look at the previous form of the trustee of
19 Kerby Keller, his address is the same, correct?

20 A. I don't remember that address.

21 Q. Okay. If that's what it says, would you take my word
22 for it?

23 A. Maybe.

24 Q. Maybe? Okay, fair enough.

25 Okay. So, now, if you look at the date, on

1 May 13th, 2020, if somebody passes away and they notify
2 you, they have to file this death of claimant's (sic)
3 statement in order for you to start the process to issue a
4 check; isn't that fair?

5 A. They have to go through the form process in order for
6 us to issue the check, yes.

7 Q. Okay. So until that form gets issued, you're not
8 writing a check, correct?

9 A. Correct.

10 Q. Okay. So depending on how long it takes will depend on
11 how soon they file that certification of death, correct, or
12 that claim?

13 A. Correct.

14 Q. Okay. And then once they do that -- that has to happen
15 first before anything else happens, correct?

16 A. Can you rephrase that?

17 Q. Let me rephrase it.

18 The process to process a claim is not going to
19 start until that death of claim statement (sic) is filed,
20 correct?

21 A. I'm not aware of, like, the exact process; but my
22 understanding is that we would need the forms and the
23 details before processing any claim.

24 Q. Okay. And once that starts, then you'll look into --
25 you'll look into the claim and then agree to pay it,

1 correct?

2 A. In some circumstances, yes.

3 Q. Right, okay.

4 And there was a statement made that you were
5 forced to pay this claim. Did the Midland National feel
6 forced to pay this claim, or is that your contractual
7 obligation?

8 A. It's our contractual obligation.

9 Q. Okay. And on the \$400,000 policy, that wasn't made to
10 the beneficiary of the trust, correct?

11 A. I believe the \$400,000 was made to the spouse.

12 Q. Okay.

13 MR. WHALEN: I'll pass the witness.

14 THE COURT: Anything additional?

15 MS. RATTAN: May I approach the witness, your
16 Honor?

17 THE COURT: Yes.

18 MS. RATTAN: May I return?

19 THE COURT: Yes.

20 REDIRECT EXAMINATION OF COURTNEY JACOBSON

21 BY MS. RATTAN:

22 Q. Let me direct your attention on the stand in front of
23 you to Government's Exhibit Number 76. Do you recognize
24 that?

25 A. I do.

1 Q. And is that a Midland life document?

2 A. It is.

3 Q. And it's been, of course, provided here by Midland
4 life?

5 A. Yes.

6 MS. RATTAN: Your Honor, we'll offer Government's
7 Exhibit 76.

8 THE COURT: Any objection?

9 MR. WHALEN: No, your Honor.

10 THE COURT: 76 will be admitted.

11 MS. RATTAN: And may we publish it?

12 THE COURT: Yes, you may.

13 BY MS. RATTAN:

14 Q. And, Ms. Jacobson, this is the same letter that we
15 discussed when you testified before. It's January 29th of
16 2020; so it's redundant of the Exhibit 29A, page 1693. And
17 it's the letter that was mailed to the insured verifying
18 the policy change; is that correct?

19 A. Correct.

20 Q. And the agent was copied on it, Keith Ashley?

21 A. Correct.

22 MS. RATTAN: I'll pass the witness, your Honor.

23 THE COURT: Anything else?

24 MR. WHALEN: Nothing further, your Honor.

25 THE COURT: Can this witness be fully excused?

1 MS. RATTAN: Yes, please, your Honor.

2 MR. WHALEN: Yes, your Honor.

3 MS. RATTAN: Oh, no, not yet. We may recall her.

4 THE COURT: So you're not excused. You can leave
5 the stand, but you are subject to recall.

6 THE WITNESS: Okay. Thank you.

7 THE COURT: What's next?

8 MS. RATTAN: Special Agent Jason Rennie.

9 THE COURT: Agent, you understand you're still
10 under oath.

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Okay. Ms. Rattan, go ahead.

13 DIRECT EXAMINATION OF JASON RENNIE

14 RECALLED ON BEHALF OF THE GOVERNMENT

15 BY MS. RATTAN:

16 Q. Please state your name.

17 A. Jason Rennie.

18 Q. And, of course, you're the lead agent; and you've
19 testified already in this case.

20 A. Yes, ma'am.

21 Q. Let me direct your attention to Government's Exhibit
22 Number 68, if you'll look in the book.

23 Do you recognize that?

24 A. I do.

25 MS. RATTAN: Your Honor, we'll offer Government's

1 Exhibit 68.

2 MR. WHALEN: I have no objection.

3 THE COURT: Okay. 68 will be admitted.

4 MS. RATTAN: And if we can publish Government's
5 Exhibit Number 68.

6 BY MS. RATTAN:

7 Q. Can you describe what this is, Agent Rennie?

8 A. Yes. It's a Beneficiary Change Request form that was
9 provided by Midland National Life Insurance Company.

10 MS. RATTAN: And if we can look at the top left
11 corner.

12 BY MS. RATTAN:

13 Q. Can you explain or describe what this is in the top
14 left corner of Government's 68, page 1?

15 A. That's a -- that's a fax stamp, which typically occurs
16 when you receive a fax from a different telephone number.
17 On -- it appears, based upon the document, on January
18 the 27th of 2020, 8:35 a.m., the fax was received from
19 9725291732.

20 Q. So January 27th of 2020, that morning, a fax is coming
21 in to Midland National from this number; is that correct?

22 A. That's correct.

23 MS. RATTAN: And, let's see, we'll offer
24 Government's Exhibit 69.

25 THE COURT: Any objection?

1 A. Pardon me. I think you -- I think you referenced
2 Exhibit 69. I think it's Exhibit 68.

3 BY MS. RATTAN:

4 Q. 68 is the fax that we just reviewed, and now we're
5 offering Government's 69.

6 A. Understood.

7 THE COURT: Mr. Whalen?

8 MR. WHALEN: Just a moment, your Honor.

9 No objection.

10 THE COURT: 69 will be admitted.

11 MS. RATTAN: So if we can focus on Government's
12 Exhibit 68, page 1. Back to Government's Exhibit 68,
13 page 1.

14 BY MS. RATTAN:

15 Q. This document is the Beneficiary Change Request that
16 we've been talking about this afternoon and it's the
17 James E. Seegan request and this is January 27th of 2020
18 and it's being sent in; is that right?

19 A. That's correct.

20 Q. And, in fact, during the testimony from the Midland
21 life witnesses and the recorded conversations, did the
22 defendant, Keith Ashley, tell Midland life that he was
23 trying to fax this beneficiary change form in?

24 A. He did.

25 Q. And does this form represent a fax that indicates that,

1 in fact, he did fax the Beneficiary Change Request form in?

2 A. Yes.

3 Q. Now let's look at the fax number, 9725291732.

4 So this would purport to be a fax sent from that
5 number to Midland life?

6 A. Yes.

7 Q. So let me direct your attention to Government's
8 Exhibit 69, page 1.

9 This is a letterhead for North Texas Money
10 Management and it says, "Keith Ashley, Registered
11 Representative."

12 So based on your investigation, what was North
13 Texas Money Management?

14 A. It was a company -- it was an investment firm or a
15 financial firm for which Mr. Ashley was a registered
16 representative.

17 Q. And, in fact, that's his email address that we've seen
18 before, keith@northtexasmoney.com; is that right?

19 A. Correct.

20 Q. And so as part of the letterhead, it says, "North Texas
21 Money Management, Keith Ashley, Registered Representative,"
22 has a location in McKinney, Texas, and it provides a fax
23 number; is that right?

24 A. It does.

25 Q. Now, when you compare the fax number on the letterhead

1 to the fax that was sent to Midland life on January 27th of
2 2020, is that the same fax number?

3 A. They are -- they are identical.

4 MS. RATTAN: And if we can do, I don't know, a
5 side-by-side on 68, page 1 and 69, page 1.

6 BY MS. RATTAN:

7 Q. So you have the fax here that was sent sending to
8 Midland life, and then you have the fax here that's Keith
9 Ashley's letterhead.

10 Are they the same number?

11 A. They are.

12 Q. And, again, that was discussed in the calls that Keith
13 Ashley was trying to send in -- fax in the beneficiary
14 change form; is that right?

15 A. That's correct.

16 MS. RATTAN: May I approach the witness, your
17 Honor?

18 THE COURT: Yes.

19 BY MS. RATTAN:

20 Q. Let me show you -- you've been present in the courtroom
21 as the various Midland life witnesses have testified; is
22 that right?

23 A. I have.

24 Q. Was there a witness who testified that on January 24th
25 James Seegan's trust became the beneficiary of James

1 Seegan's \$2 million life policy?

2 A. That's correct.

3 Q. And that Keith Ashley called Midland life about the
4 documents on January 24th of 2020?

5 A. He did.

6 Q. Now, one thing that the Midland life employees didn't
7 know that Courtney Jacobson made clear is that Keith Ashley
8 was the executor of the trust that was going to be the
9 beneficiary of the \$2 million; is that right?

10 A. That's correct. Mr. Ashley did not disclose that fact.

11 Q. Okay. But that's on this slide; is that right?

12 A. Correct.

13 Q. And this is accurate?

14 A. It is.

15 Q. So on January 24th of 2020, James Seegan's trust with
16 Ashley as the executor became the beneficiary of the
17 \$2 million life policy?

18 A. Correct.

19 Q. And Ashley called Midland life to check on the
20 documents?

21 A. He did.

22 Q. And then on the 27th, he continued to fax and email and
23 call. As a matter of fact, the fax that we see on the
24 screen that's still displayed is January 27th of 2020; and
25 it was faxed in, him asking is this beneficiary change in

1 place.

2 So he's faxing, emailing -- we saw the email to
3 Jennifer Jennings -- and he's calling Midland life about
4 the documents changing James Seegan's 2 million life
5 beneficiary to his trust?

6 A. Correct.

7 Q. And then on January 29th, Courtney Jacobson has
8 testified that a letter was mailed saying it's done?

9 A. Correct.

10 Q. So let me ask you if I can direct your attention to
11 this date, January 24th of 2020.

12 Have you reviewed Keith Ashley's cell records as
13 they relate to January 4th (sic) of 2020 and the phone call
14 that was being placed to Midland life?

15 A. I have.

16 MS. RATTAN: And, your Honor, if they haven't
17 previously been admitted, we'll offer the AT&T records
18 which are Government's Exhibits 4A and B.

19 THE COURT: Any objection?

20 MR. WHALEN: No, your Honor.

21 THE COURT: Okay. 4A and B will be admitted.

22 BY MS. RATTAN:

23 Q. And, Agent Rennie, would you describe what 4A and B
24 are? What are these records?

25 A. 4A is at least two sets of records received pursuant to

1 the investigation from AT&T, different time frames during
2 late 2019 through mid 2020 for -- initially it was for
3 Mr. Ashley's cell phone, and then there was additional --
4 actually, I think it was for records attached to all the
5 cell phones on Mr. Ashley's cell phone account with AT&T.

6 Q. Okay. So these are his cell phone records?

7 A. Correct.

8 Q. Keith Ashley's cell phone records?

9 A. Correct.

10 Q. And do the cell phone records, just like an
11 old-fashioned phone bill, show numbers incoming and
12 outgoing?

13 A. Sure. It's just a -- it's just what they call toll
14 records. It shows incoming and outgoing calls, shows times
15 and text messages.

16 Q. And now you can look up your bill online and see calls
17 that were coming and going?

18 A. Correct.

19 Q. But do the records that you received from AT&T go a
20 step farther and provide cell site information about where
21 Keith Ashley's phone was at various times?

22 A. Correct.

23 Q. Okay. And will you explain to the jury what cell site
24 information is?

25 A. Cell site information are the towers, the locations,

1 the latitude and longitude data of the tower locations when
2 the call was taking place.

3 So very generically, when you're driving, your
4 phone connects to a tower. It connects to a sector on the
5 tower. And then if you're moving, then it passes from
6 tower to tower.

7 In certain, you know, cases law enforcement will
8 request cell site data to put a very distinct location on
9 the phone when calls and text messages are taking place.
10 It's not all of the time where the phone is; it's only when
11 it's connected to the tower through a phone call or text
12 message.

13 With that --

14 MR. WHALEN: Objection to a narrative.

15 THE COURT: Go ahead and ask another question.

16 BY MS. RATTAN:

17 Q. What else do you know about cell site information?

18 A. It's only attainable by a search warrant. So through
19 the course of the investigation, these items were obtained
20 via search warrant. As a normal subpoena that we would
21 acquire cell phone records, toll records we could obtain;
22 but you cannot obtain the location of the -- where the
23 towers were when the call was taking place without a search
24 warrant.

25 MS. RATTAN: And then if we can publish

1 Government's Exhibit 66, please.

2 BY MS. RATTAN:

3 Q. This is the call that we heard through witness Paula
4 Diaz, and it's a call on January 24th of 2020 between Paula
5 Diaz and Keith Ashley.

6 MS. RATTAN: And if we can look at Government's
7 Exhibit 66, page 2, lines 20 through 25.

8 BY MS. RATTAN:

9 Q. And what they're talking about here is James E.
10 Seegan's Revocable Trust. 100 percent is going to be the
11 primary beneficiary, and the date of birth is going to be
12 the date of the trust.

13 So what are they talking about here in this call?
14 It's Paula Diaz on January 24th of 2020 talking to the
15 defendant, Keith Ashley.

16 A. They're talking about the change of the beneficiary for
17 Mr. Seegan's \$2 million policy from his wife to the
18 irrevocable (*sic*) trust.

19 Q. And again who is the executor of the trust?

20 A. The defendant, Keith Ashley.

21 Q. So this would be January 24th of 2020, Ashley calls
22 Midland life about the documents?

23 A. Correct.

24 Q. Did you check Keith Ashley's cell phone records and
25 look at the cell site information, where was his phone when

1 this call took place on January 24th of 2020?

2 A. I did.

3 Q. And can you tell the jury, using Government's
4 Exhibit 4A and B, where the defendant's phone was when this
5 call was placed on January 24th of 2020?

6 A. On January 24th of 2020, Mr. Ashley's cell phone during
7 the call with Midland life was located in the Eastern
8 District of Texas.

9 Q. Now let me direct your attention to Government's --
10 rather, January 27th of 2020.

11 And again on January 27th of 2020, Ashley is
12 faxing, emailing, and calling Midland life about the
13 beneficiary change for the \$2 million.

14 Did you check to see whether he called Midland
15 life from a specific location on January 27th of 2020?

16 A. I did.

17 Q. And can you describe for the jury where Keith Ashley's
18 phone was on January 27th of 2020?

19 A. During the call to Midland life on January 27th of
20 2020, Mr. Ashley's phone was located in the Eastern
21 District of Texas.

22 Q. Now, as it says on the slide, he didn't just call. He
23 also emailed and he faxed.

24 Were you able to determine a location for him for
25 the email and the fax as well?

1 A. I did. A review of the phone records during the times
2 that those emails were sent and the fax was sent, it
3 appears that the calls and text messages that bracket those
4 times, that Mr. Ashley was located also in the Eastern
5 District of Texas.

6 Q. So you checked the time that the email was sent and you
7 checked the time that the fax was sent and his phone was
8 sending and receiving messages at that same time in the
9 Eastern District of Texas?

10 A. Yes. It wasn't during the exact time. But when -- a
11 call we have the exact time, obviously, because the call
12 time is the call.

13 When it's -- when it's an email that has a time on
14 it or it's a fax that has a time on it, if we don't have
15 something going on that's concurrent with that, then
16 usually what we do is we bracket.

17 If it's an 8:05 call we can look where was he
18 calling from at 7:45, where was he calling from at 8:15.
19 If those are both in the Eastern District of Texas, then
20 it's reasonable to assume that between those times he was
21 in the Eastern District of Texas.

22 MS. RATTAN: I'll pass the witness, your Honor.

23 THE COURT: Cross-examination?

24 *

25 *

1 CROSS-EXAMINATION OF JASON RENNIE

2 BY MR. WHALEN:

3 Q. Agent Rennie, Mr. Ashley's house -- well, let me ask
4 you this: The locations that you say he was in the Eastern
5 District of Texas, what area of the Eastern District of
6 Texas was he in?

7 A. For the January 24th call, I believe the call started
8 in the Northern District of Texas; but before the call
9 ended, it was passed to a tower that's located in the
10 Eastern District, actually north of George Bush in Plano,
11 Texas, east of 75, if I recall correctly.

12 And for the January --

13 Q. Let me stop you right there.

14 A. Sure.

15 Q. Okay. So on the 24th, January 24th's call, it was
16 initiated in the Northern District, correct?

17 A. Correct.

18 Q. Okay. Then according to the data, it may have -- it
19 connected to another tower, correct?

20 A. That's my interpretation. That's correct.

21 Q. Okay. That's your interpretation of it.

22 A. Correct.

23 Q. Isn't it true --

24 A. I believe --

25 Q. -- that cell towers can cover up -- how many square

1 miles can cell towers cover?

2 A. I don't know the exact figure but -- it's not a finite
3 point. The tower itself is the finite point that I'm
4 drawing on, but the tower does cover some area. I don't
5 know how long. I think it depends on topography. I think
6 it depends on, you know, buildings and how far it is. I
7 don't know if it's an exact science.

8 Q. Okay. So it's a -- fair to say it's an estimate. I
9 mean, you can't be certain that --

10 A. I can -- I can -- yeah, I can be certain of where the
11 tower is. The tower that it's touching is in the Eastern
12 District. That is the latitude and longitude of the tower.

13 Fair to say what sector of the tower, meaning
14 sector -- if you have a pie, it's 1, 2, 3, 4 -- if you
15 divide it what side of the tower they're on. So fair to
16 say that that call touched a tower in the Eastern District
17 of Texas.

18 But to your point, if there was a radius and the
19 circumference of how that covers, there may be a portion of
20 it that's not in the Eastern District, a portion that is.

21 But I can tell you that the call did touch a tower
22 in the Eastern District.

23 Q. Okay. All right. And then you also talked about -- as
24 far as the fax, you mentioned the fax machine.

25 A. Yes, sir.

1 Q. Okay. Did you review any records about where that was
2 initiated from?

3 A. Well, the fax number I could only tie to a physical
4 location. The physical location -- the 972 -- I forget the
5 telephone number but -- 1732, I believe it was. We tie it
6 to Mr. Ashley's letterhead. We also tie it to
7 circumstantially that Mr. Ashley is talking about faxing a
8 document on January 27th, talking about faxing the
9 beneficiary change document on January 27th.

10 And then Midland life receives a fax that we can
11 connect to open source as North Texas Money Management and
12 then documents provided by an investor, letterhead with
13 Mr. Ashley's name on it with a fax that says 1732.

14 Q. Sure. I mean, I get that. I get that part.

15 The question I guess I need to ask better is: Do
16 you know where that fax was initiated from?

17 A. At the time it was sent, I don't know where it was
18 initiated from.

19 Q. Okay. And you also talked about an email on
20 January 27th. Did you talk about the email on
21 January 27th?

22 A. Yes.

23 Q. Okay. And as far as the email goes -- let me go back
24 to the fax real quick.

25 A. Sure.

1 Q. Nowadays the fax machine is like an antiquated device,
2 correct?

3 A. Well, the FBI still has one so --

4 Q. Okay.

5 A. -- it's not that antiquated.

6 Q. All I can remember about the fax machine is on *Office*
7 *Space* when they beat it with a baseball bat. It's just an
8 old thing, right?

9 A. The one we have looks exactly like that one.

10 Q. Okay. Now you have services like eFax and things like
11 that that you can fax and have a number but do it through
12 email or directly from a website and just upload a document
13 and you fax it; is that true?

14 A. Yes. Those programs do exist, yes.

15 Q. Okay. Now, as far as the January 27th telephone call,
16 what did you testify about as relation to that?

17 A. So we had a 24th call, a --

18 Q. Right.

19 A. -- 27th telephone call --

20 Q. Yeah. Let's talk about the 27th telephone call.

21 A. Sure.

22 Q. Okay. Where was that -- what's your testimony about
23 where that was initiated?

24 A. It was initiated -- actually, it appears based upon the
25 tower, it was actually at the brewery, Nine Band Brewery in

1 Allen, Texas, which is in the Eastern District.

2 Q. Okay. But all you can say is it connected to that
3 tower?

4 A. Sure. But no matter what the radius or circumference
5 and the coverage tower (*sic*) of that tower, Allen is, as
6 you know, very far into the Eastern District. It's not
7 close to the border. So my assumption would be the entire
8 tower coverage during that time would be in the Eastern
9 District.

10 Q. Okay. But you don't know -- personally looked at the
11 data, the coverage of the tower or the bandwidth or
12 anything like that?

13 A. No, sir.

14 Q. Okay. All right. And then as far as the email goes,
15 have you -- did you talk about the email at all?

16 A. The email was referenced. The email, I believe, was
17 sent at 11:24 on January -- I would -- the date -- I
18 believe it was January the 27th as well.

19 What I did is I took Mr. Ashley's cell records and
20 just bracketed the time. I think he had a call -- he had a
21 phone call 4 or 5 minutes before that time was -- that
22 email was sent and then maybe 15 or 20 minutes after or it
23 was a call and a text message.

24 And both of those hit towers that were near the
25 brewery, the same tower as the call. So based upon that,

1 one would assume that he was in the Eastern District during
2 that time.

3 Q. Okay. So you're just basing it on the fact that there
4 were some phone calls around it, and so then you're just --
5 then you're saying, as you said, making an assumption that
6 it was there. Is that --

7 A. Yeah. So he made a phone call 5 minutes before that
8 email was sent and that was from the brewery, and then he
9 had a text message 15 minutes after that was sent and that
10 tower is at the brewery. So I think that's a reasonable
11 assumption.

12 Q. Okay. That's your reasonable assumption?

13 A. Yeah, I --

14 MS. RATTAN: Your Honor, I'd object. It's
15 argumentative.

16 THE COURT: Well, just rephrase the question.

17 BY MR. WHALEN:

18 Q. Isn't it true that other people can have access to
19 email accounts online and send emails and it appears that
20 it's -- and it can be coming from that email account, but
21 they could be in a totally different place?

22 A. Are you saying that just because he sent an email
23 doesn't mean he was where his phone was at the time?

24 Q. Correct.

25 A. That's possible.

1 Q. Okay. All right.

2 MR. WHALEN: I'll pass the witness.

3 THE COURT: Anything additional?

4 MS. RATTAN: Yes, your Honor. Thank you.

5 Thank you, your Honor.

6 May it please the Court?

7 THE COURT: Yes, go ahead.

8 REDIRECT EXAMINATION OF JASON RENNIE

9 BY MS. RATTAN:

10 Q. Agent Rennie, the questions that defense counsel was
11 asking you about the location of the phone, did you, in
12 fact, prepare some detailed charts that explain your
13 analysis of what happened and where it happened?

14 A. I did.

15 Q. Okay. And are those contained in Government's
16 Exhibit 132?

17 A. They are.

18 MS. RATTAN: Your Honor, we'll offer Government's
19 Exhibit 132.

20 MR. WHALEN: No objection, your Honor.

21 THE COURT: 132 will be admitted.

22 MS. RATTAN: And may we publish Government's
23 Exhibit 132, page 1?

24 THE COURT: Yes.

25 *

1 BY MS. RATTAN:

2 Q. Okay. So 132, page 1, it's the Paula Diaz phone call
3 on January 24th of 2020 at 9:04 a.m.; and this is Count 9
4 of the Indictment.

5 And you said -- you testified on direct that you
6 did analysis of where the phone call came from. Can you
7 use this chart, Government's Exhibit 132 page 1, to explain
8 what your analysis showed?

9 A. Sure.

10 So actually if you scroll to page 2.

11 So the bottom of page 2, right here in the black
12 and white, you see that's a snippet from the AT&T record
13 itself. So that's a snippet from the search warrant that's
14 provided directly from AT&T.

15 On the right side there, those are the latitude
16 and longitude coordinates of the tower for which
17 Mr. Ashley's cell phone was bouncing off of during this
18 call.

19 And most calls, if you're stationary, will only
20 have -- if you see it says, the very top line, the very
21 last -- the very last notation on the first line is a
22 negative. So it's negative 96.89:32.977. That's the
23 coordinate.

24 In this call you can -- you can tell that
25 Mr. Ashley was moving during this call because there's

1 actually two sets of coordinates.

2 So the first one, -96.8909:32.977. If you scroll
3 up to the first page, that's entered into Google.

4 And you see it just below the picture there. It
5 says "32.977, -96.8909."

6 And it plots in minutes north and west. There is
7 a conversion. It plots that and it says at that time, in
8 fact, it appears to be that Mr. Ashley was at the
9 deceased's home, James Seegan, during the -- at least the
10 initiation of this call.

11 Q. Okay. And what happened as the call continued?

12 A. Correct.

13 And so on the second page, the second set of
14 coordinates, which is different, obviously, than the first,
15 those are also plotted. It's 33.01 and then -96.807. And,
16 as I said, it's -- it plots here, which is north of George
17 Bush.

18 North of George Bush -- and, actually, I take that
19 back. It was -- I misstated. I said it was Central
20 Expressway. That's actually George Bush and the Dallas
21 North Tollway.

22 Q. And that would be in the Eastern District of Texas?

23 A. Yes. That's well within the Eastern District of Texas.

24 Q. And then although this is Government's Exhibit 132, you
25 listed down here Government's Exhibit 4B and the page

1 number that you took the cell site information from; is
2 that right?

3 A. Exactly.

4 So if you were to look at the actual record,
5 4B001, Entry 7080, it would have that telephone call.

6 Q. So you took the cell site information off of the
7 defendant's phone and you took the coordinates and you
8 entered the coordinates to determine the location of the
9 phone when the call was made?

10 A. Correct.

11 MS. RATTAN: Now if we can look at
12 Government's 132, page 3.

13 BY MS. RATTAN:

14 Q. Again, this is January 27th of 2020; and that's the
15 call that was made with Jennifer Jennings at 10:26 a.m. So
16 he's calling Midland life again to check on the status of
17 this change.

18 And you did your analysis on where the phone was;
19 is that right?

20 A. I did.

21 Q. And what did it show?

22 A. Again, at the very bottom of this page, that's the
23 snippet, so Entry 7216 on the actual records provided by
24 AT&T, which is Exhibit 4B, page 2.

25 You take the coordinates, which are 33.093227 and

1 96.67326. You enter that in. There is a slight conversion
2 due to minutes and seconds. And it plots the tower, which
3 based upon -- based upon the investigation, the evidence
4 shows that that tower is very, very close to 9 Prestige
5 Circle, Allen, Texas, which is Nine Band Brewery, which is
6 owned by the defendant, Keith Ashley.

7 MS. RATTAN: And then if we can look at the next
8 page, Government's Exhibit 132, page 4.

9 This is a call that we haven't covered yet, so we
10 can cover this later.

11 We'll pass the witness, your Honor.

12 THE COURT: Anything additional?

13 MR. WHALEN: Yes.

14 RECROSS-EXAMINATION OF JASON RENNIE

15 BY MR. WHALEN:

16 Q. Agent Rennie, isn't it true that if I am near a tower
17 and it's full, it's going to push me to another tower and,
18 if that's full, push me to another tower and connect with
19 that?

20 A. I generally understand that; but, again, I don't -- I
21 don't know what would cause that. I can't speak
22 intelligently about how it pushes things if it's overflowed
23 or it's down or something.

24 Q. Okay. So you don't have any personal knowledge or
25 expertise in that area to articulate that or not, correct?

1 A. I do not.

2 Q. All right.

3 MR. WHALEN: I'll pass the witness.

4 MS. RATTAN: Just briefly.

5 THE COURT: Go ahead.

6 MS. RATTAN: Thank you.

7 FURTHER REDIRECT EXAMINATION OF JASON RENNIE

8 BY MS. RATTAN:

9 Q. Did the defendant, Keith Ashley, have any property
10 outside of the Eastern District of Texas?

11 A. Not to my knowledge.

12 Q. Was his business in the Eastern District?

13 A. It was.

14 Q. Was his house in the Eastern District?

15 A. It was.

16 MS. RATTAN: That's all, your Honor.

17 THE COURT: Okay. Agent, you may step down.

18 THE WITNESS: Thank you, your Honor.

19 THE COURT: So why don't we go ahead and just take
20 our afternoon break at this time. Again, ladies and
21 gentlemen, please don't discuss the case among yourself or
22 anyone else. Don't do any outside research. We'll take
23 15 minutes, come back, and continue. Thank you.

24 (The jury exits the courtroom, 2:56 p.m.)

25 THE COURT: Anything further from the government?

1 MS. RATTAN: No, your Honor.

2 THE COURT: Defense?

3 MR. WHALEN: No, your Honor.

4 THE COURT: Okay. See you back in 15.

5 (Recess, 2:57 p.m. to 3:14 p.m.)

6 (Open court, defendant present, jury not present.)

7 MS. RATTAN: We have an issue to bring up before
8 the jury comes in.

9 THE COURT: Oh, yes, you may approach.

10 (Sidebar conference, off the record.)

11 (The jury enters the courtroom, 3:14 p.m.)

12 THE COURT: Please be seated.

13 Okay. Your next witness?

14 MR. FINE: We'll call Sakdida Seegan, your Honor.

15 THE COURT: Ma'am, if you'll raise your right hand
16 to be sworn in.

17 (The oath is administered to the witness.)

18 THE COURT: Okay. Go ahead and proceed.

19 MR. FINE: Thank you, your Honor.

20 DIRECT EXAMINATION OF SAKDIDA SEEGAN

21 CALLED ON BEHALF OF THE GOVERNMENT

22 BY MR. FINE:

23 Q. Good afternoon, Mrs. Seegan. How are you?

24 A. Good afternoon. I'm good.

25 Q. And so, Mrs. Seegan, you speak very softly. You're

1 going to have to speak directly into that microphone so
2 that the jury and everybody in here can hear you. Okay?
3 A. Okay.

4 Q. Will you please introduce yourself to the ladies and
5 gentlemen of the jury and spell your first and last name
6 for the court reporter?

7 A. All right. My name is Sakdida Seegan, S-A-K-D-I-D-A
8 S-E-E-G-A-N.

9 Q. And, Mrs. Seegan, does everybody call you Dida?

10 A. Yes, sir.

11 Q. Okay. Is it all right if I call you Dida?

12 A. Yes.

13 Q. Okay. All right. That's how we've come to know each
14 other, correct?

15 A. Yes.

16 Q. All right. So I want you to tell the jury -- let's
17 start with this: Where were you born?

18 A. I born in Thailand.

19 Q. And how long did you live in Thailand for?

20 A. How long?

21 Q. Yeah. About what -- I'm not meaning to embarrass you.
22 I'm not going to make you say how old you are. But at what
23 age did you come over to the United States?

24 A. 2008.

25 Q. Okay. And you've been here for about 14 years now?

1 A. Yes.

2 Q. Did you -- when you moved from Thailand, did you move
3 to the Dallas-Fort Worth area?

4 A. Yes.

5 Q. And what city, specifically, did you move to?

6 A. Carrollton.

7 Q. Okay. And what was your address -- what was the
8 address where you lived in Carrollton?

9 A. 2114 Cannes Drive, Carrollton, Texas, 75006.

10 Q. And do you still live there today?

11 A. Yes.

12 Q. Who -- when you moved to Carrollton, did you know a man
13 named James Seegan?

14 A. Yes.

15 Q. And tell the jury, who was James Seegan to you?

16 A. He was a very wonderful husband and dad and wonderful
17 son to his mom and wonderful brother to his brother.

18 Q. And was James also known as Jim?

19 A. Yes.

20 Q. Did you call him Jim or James?

21 A. I call him both, sometimes James, sometimes Jim, mostly
22 called him James.

23 Q. Did a lot of his friends call him Jim?

24 A. Yes.

25 Q. And before we talk about Jim --

1 A. Yes.

2 Q. -- do you work, Dida?

3 A. Yes, I work.

4 Q. What kind of work do you do?

5 A. I am massage therapy.

6 Q. Massage therapy?

7 A. Yes.

8 Q. And how long have you been doing that for?

9 A. I think maybe two years.

10 Q. Okay.

11 A. Yeah.

12 Q. And I want to talk a little bit about Jim. Is that

13 okay?

14 A. Yes.

15 Q. Tell the jury, first of all, where did Jim -- where was

16 he born? Where did he grow up?

17 A. He born on Pittsburgh, and then he grew up over there.

18 But then he moved to Oklahoma for his school.

19 Q. And after Oklahoma, eventually he moved to the Dallas

20 area?

21 A. Yes.

22 Q. And then he moved to Carrollton?

23 A. Yes.

24 Q. And did he actually own the house -- that house before

25 y'all met?

1 A. Yes.

2 Q. And after you guys met, eventually you got married?

3 A. Yes.

4 Q. And what year did you marry Jim?

5 A. 2008.

6 Q. 2008.

7 And so y'all were married about 12 years?

8 A. Yes.

9 Q. And did you have any children together?

10 A. I have one boy. Now he's 8 years old.

11 Q. And tell the jury about -- your son's name is Josh,
12 correct?

13 A. Yes. He is 10. I said 8.

14 Q. Tell the jury a little bit about Josh.

15 A. Josh, he's very smart; and then he very attached to his
16 dad so much.

17 Q. And what grade is he in now?

18 A. Fourth.

19 Q. And he's in school -- well, he's probably -- I guess
20 he's just about getting out of school right now, right?

21 A. Yes.

22 Q. And does he go to school in the Carrollton area?

23 A. Yes.

24 Q. All right. And what was Jim's relationship with Josh
25 as a father-son?

1 A. He is -- he was the most caring and amazing dad to his
2 son; so he would do everything for Josh, everything. He
3 even retired early because of Josh alone. He want to spend
4 time with him as much as he could.

5 Q. And I was going to -- that's actually where I was going
6 to go next.

7 In terms of Jim, at the time of his death he was
8 retired, correct?

9 A. Yes.

10 Q. What did he do for a living before he retired?

11 A. He work for IBM company as a sales representative.

12 Q. For IBM?

13 A. For IBM.

14 Q. And what did he do with IBM?

15 A. What I know, he do different thing. He do consultant.
16 He do for -- like teach people how to sell, and he sell
17 also.

18 Q. Okay. So he was in sales with IBM?

19 A. Yes.

20 Q. And was he a supervisor as well? Did he supervise
21 other people?

22 A. Yes.

23 Q. And about how long did he work at IBM?

24 A. Thirty years.

25 Q. Thirty years.

1 Did he work most of his entire career at IBM?

2 A. Yes.

3 Q. What year did he retire?

4 A. I forgot what year, but he (indiscernible) -- 60.

5 Q. At 60?

6 A. Yes.

7 Q. Okay. Josh was born in twenty- --

8 A. '12.

9 Q. -- '12?

10 A. Yes.

11 Q. When Josh was born, was Jim still working?

12 A. Yes.

13 Q. About how old was Josh when Jim stopped working, when
14 he retired?

15 A. I would say 5.

16 Q. Okay.

17 A. 5, almost 6 years old.

18 Q. And was that when Josh started going to elementary
19 school?

20 A. Yes.

21 Q. And was that part of the reason why Jim stopped
22 working, retired early?

23 A. Yes, because of Josh.

24 Q. And was that part of the routine? Jim would take Josh
25 to school every morning?

1 A. Yes.

2 Q. Would he pick him up from school every afternoon?

3 A. Yes.

4 Q. Was that something Jim loved doing?

5 A. Yes.

6 Q. Did he love spending time with Josh?

7 A. Yes.

8 Q. Do you -- obvious question. Do you love spending time

9 with Josh?

10 A. Yes.

11 Q. The three of you as a little family --

12 A. Yes.

13 Q. -- were those special times for you?

14 A. Yes.

15 Q. What about -- you know, when people retire, they have

16 hobbies, right?

17 A. Right.

18 Q. Tell the jury some of the hobbies that Jim had.

19 A. He liked to work in the garden in the backyard, the

20 front yard, and volunteer for our neighbor to work -- I

21 don't know what they call. Like they have somebody, like,

22 plant the flower or something like that for the community.

23 Q. Like a community garden-type thing?

24 A. Something like that.

25 Q. Okay.

1 A. And he loved to go to the gym. He loved to read.
2 Q. Was he also sort of working on your house --
3 A. Yes.
4 Q. -- doing some remodeling?
5 A. Yes.
6 Q. And tell the jury about that.
7 A. He was planning to do new flooring, change air
8 condition, the cooling/heating, and change all the floor in
9 the house and fix things around the house.
10 Q. Okay. So you talked about flooring --
11 A. Yes.
12 Q. -- air-conditioning?
13 A. Yes.
14 Q. These were some pretty major projects.
15 A. Very major, yes.
16 Q. And when he -- upon his passing, did he still have
17 these projects in the works, basically?
18 A. Yes.
19 Q. After he died, were packages still coming to your house
20 to refurbish and do home remodeling?
21 A. Yes.
22 Q. In fact, were there still supplies in one of the rooms
23 in your house for flooring and things like that?
24 A. Yes.
25 Q. Was this something that he was looking forward to

1 doing?

2 A. Yes.

3 Q. Did he enjoy fixing things up like that?

4 A. Yes.

5 Q. Did he also enjoy working with computers?

6 A. Yes.

7 Q. Was he a football fan as well?

8 A. Yes.

9 Q. Do you remember who his favorite team was?

10 A. No, I don't. I don't interested in football.

11 Q. If there were some items in your house -- in the
12 bedroom there was a calendar, a football calendar. Do you
13 remember that?

14 A. Yes. Yes.

15 Q. Do you remember what team that was?

16 A. No, I don't know.

17 Q. If I told you the Pittsburgh Steelers, does that sound
18 right?

19 A. Yes.

20 Q. All right. And there is -- in the office -- and this
21 jury is going to get a chance to see these photographs.
22 But in the office were there pictures of Josh all through
23 Jim's office?

24 No, it's not there yet. I'm just sort of asking
25 you --

1 A. Oh.

2 Q. -- to describe it.

3 A. Okay.

4 Q. No, my mistake.

5 Were there pictures of Josh all through Jim's
6 office?

7 A. Yes.

8 Q. Some sports memorabilia as well?

9 A. Yes.

10 Q. Pictures and things of -- did Josh play T-ball at some
11 point?

12 A. Yes.

13 Q. Did Jim help with that?

14 A. Yes.

15 Q. Was he proud of that, too?

16 A. Yes.

17 Q. Were those things in the office also?

18 A. Yes.

19 Q. All right. You know why you're here today, correct?

20 A. Yes.

21 Q. I assume you're nervous to testify. Is that --

22 A. Yes.

23 Q. -- fair to say?

24 A. Yes.

25 Q. All right. I want to ask you if you know a man named

1 Keith Ashley. Does that name sound familiar to you?

2 A. Yes.

3 Q. Do you -- would you recognize Keith Ashley if he was in
4 the courtroom today?

5 A. I don't see him.

6 Q. Okay. How well did you know Keith Ashley?

7 A. Not well.

8 Q. Did you ever go out to dinner with him or anything like
9 that or have any social interactions or just kind of see
10 him from time to time?

11 A. Time to time. I think maybe I -- I saw him a few time.

12 Q. And what did you know about Keith Ashley?

13 A. I know only he was working for Bob, my husband's
14 brother, for financial. That's all I know.

15 Q. Okay. He worked with Jim's brother, Bob, doing --

16 A. Yes.

17 Q. -- some finances --

18 A. Something --

19 Q. You don't know specifically but something with
20 finances?

21 A. Exact, yes.

22 Q. And did he work with Jim in regards to finances as
23 well?

24 A. I did not --

25 Q. Okay.

1 A. -- know that.

2 Q. When it came to finances and the house -- you were
3 working, right?

4 A. Right.

5 Q. Jim was retired?

6 A. Right.

7 Q. Did Jim have a pension as well?

8 A. Yes.

9 Q. And was that helping -- between your salary and the
10 pension, was that helping to cover the bills and help with
11 expenses around the house?

12 A. Probably.

13 Q. Okay.

14 A. Yeah.

15 Q. Is it -- and tell me if I'm wrong on this. Is it fair
16 to say when it came to Jim's finances, you didn't really
17 know a lot about it?

18 A. No, I did not know a lot about it.

19 Q. Y'all -- you and Josh and Jim, y'all lived a
20 comfortable life. Is that fair to say?

21 A. Yes.

22 Q. And you had things that you needed, right?

23 A. Yes.

24 Q. But were you really that interested in how much money
25 Jim had or where money was coming from or anything like

1 that?

2 A. No. I never.

3 Q. Okay. I want to turn your attention to February 19th,
4 2020.

5 A. Okay.

6 Q. I know this is going to be difficult, but I want to
7 start with that morning.

8 A. Okay.

9 Q. Did you see Jim that morning?

10 A. I did.

11 Q. And what was his -- what was his demeanor like that
12 morning? How was he acting?

13 A. He told me that he ordered two shoes for Josh. He said
14 when the shoe arrive, just let Josh try on first. If Josh
15 doesn't like it, we can return it back. If he like them,
16 we can keep it.

17 Q. So basically he had bought Josh two pairs of shoes --

18 A. Yes.

19 Q. -- right?

20 A. Right.

21 Q. And it was one of those things, let Josh figure out
22 which pair he likes --

23 A. Yes.

24 Q. -- and the other pair is going to go back to the store,
25 right?

1 A. Yes.

2 Q. And he told you that that morning, that his plan was he
3 was going to return whatever pair of shoes he didn't like,
4 right?

5 A. Yes.

6 Q. Do you remember -- and I know it's difficult. I'm not
7 trying to pin you down on a specific time. But do you
8 remember around what time of the morning that was when you
9 had that conversation?

10 A. I think maybe sometime before 7:00 --

11 Q. Okay.

12 A. -- a.m., yes.

13 Q. What time did y'all wake up generally on a school day?

14 A. 6:00.

15 Q. 6:00?

16 A. Uh-huh.

17 Q. And what time would Jim take Josh to school?

18 A. I'm not recall exactly time, but we could be there
19 before 7:30.

20 Q. Okay. Had to be there --

21 A. At school.

22 Q. -- to school around 7:30?

23 A. Yes.

24 Q. And so you had a conversation talking about shoes. Was
25 it a normal morning?

1 A. Yes, normal.

2 Q. Nothing out of the ordinary?

3 A. No.

4 Q. So you have this conversation around 7:00. Did Jim
5 take Josh to school around 7:30 in the morning?

6 A. Yes.

7 Q. Did he come back after dropping off Josh --

8 A. Yes --

9 Q. -- at the school?

10 A. -- he came back.

11 Q. And what were you doing when he came back?

12 A. I was riding a exercise bike.

13 Q. Okay. Was that in the house, the exercise bike?

14 A. Yes, in the house.

15 And then I was asking him how was the weather
16 outside and then -- I just want to make sure that I bring
17 my jacket, the right one. It might be over or just like
18 light -- sometime it's not cold but I bring really heavy
19 jacket.

20 So I ask him how is the weather look like so I can
21 bring the right jacket when I go to work.

22 Q. And did he tell you what the weather was like outside?

23 A. He said, like, you -- I can bring something like
24 medium, not too heavy.

25 Q. Because it's February in Texas. It could be 90, or it

1 could be --

2 A. Yes.

3 Q. -- freezing, right?

4 A. Yes.

5 Q. And so medium jacket.

6 Again normal conversation with Jim?

7 A. Yes.

8 Q. And did you leave to go to work that morning?

9 A. Yes, I did.

10 Q. About what time did you leave to go to work?

11 A. I remember I leave around 9:00, a little bit up, like
12 9:00 and 5 minute or something like that. I'm not really
13 recall it exactly.

14 Q. And that's fine.

15 So give or take, around 9:00 in the morning you
16 left?

17 A. Yeah.

18 Q. Was that your normal routine?

19 A. Yeah, my normal routine.

20 Q. When you left at 9:00 in the morning, was there
21 anything out of the ordinary that you saw from Jim at all?

22 A. No.

23 Q. Did he tell you what his plans were that day?

24 A. No.

25 Q. When you left, where was Jim?

1 A. He was upstairs in his office.

2 Q. Was that normal for him --

3 A. Normal.

4 Q. -- to be upstairs?

5 A. Normal.

6 Q. And so you leave to go to work, right?

7 A. Yes.

8 Q. And unbeknownst to you at the time, you would never see
9 your husband again, correct?

10 A. Correct.

11 Q. I want to move forward through your day. Did you and
12 Jim talk at all during the day when you worked?

13 A. No.

14 Q. Was that out of the ordinary, or was it sort of you
15 would go to work and then you would meet up afterwards and
16 talk at that point?

17 A. Yes.

18 Q. Okay. Some -- you know, some people, they can text and
19 call during the day. At your job is that something you can
20 really do, be on your phone or text and call too much
21 during the day?

22 A. No. I don't text or call him during the day. I work
23 until I get home.

24 Q. And when you get home --

25 A. Yes.

1 Q. -- on a normal day -- let's take February 18th.

2 A. Yes.

3 Q. Okay. On February 18th or any normal day, what time
4 would you usually get home?

5 A. Depends. Sometimes I get home at 8:00, sometimes 7:30.
6 So it's almost bedtime for everyone already.

7 Q. And would -- on the 18th was Jim home when you got
8 home?

9 A. Yes.

10 Q. Was he with Josh?

11 A. Yes.

12 Q. Did he pick up Josh every day from school?

13 A. Yes.

14 Q. Was that his thing?

15 He loved doing that, right?

16 A. Yeah, he loved to do that, yes.

17 Q. And was there ever a time where he didn't pick up Josh
18 from school?

19 A. No, never.

20 Q. And so you're at work on February 19th, and did you
21 receive a call sometime around 3:30 or 4:00 in the
22 afternoon?

23 A. Yes.

24 Q. And tell the jury, what was the -- what was that call
25 about?

1 A. I got phone call from school, said that my husband did
2 not come and pick up Josh. So I told -- I told them that
3 it's never been like this. Maybe he might be in a meeting
4 or something. Let me call him first.

5 So I was trying to call him many times. So he did
6 not answer the phone, so I wait.

7 After that, school called me again that they still
8 haven't heard from my husband.

9 Q. And was that something that really concerned you?

10 A. Yes, very.

11 Q. Had that ever happened before?

12 A. Never, ever.

13 Q. And so what did you do after the school called you back
14 for the second time?

15 A. I told him I will go and pick up Josh.

16 Q. And did you --

17 A. So I --

18 Q. Go ahead.

19 A. I drove from work to school.

20 Q. And about how far is that drive from your work to
21 Josh's school?

22 A. On that day I remember it was raining a lot and raining
23 all day. It take -- like traffic. It take me like maybe
24 40 minute to be at school.

25 Q. And during that 40-minute drive, what was going through

1 your head?

2 A. I -- I think on -- to my work from school (*sic*), I
3 think he might be in a meeting or maybe something that he
4 could not answer the phone or something. But I don't think
5 anything bad yet during my work to school because I'm
6 worried about Josh, that nobody pick him up and he might
7 very scare.

8 Q. And Josh -- back in February of 2020, he was 8; is that
9 right?

10 A. 7.

11 Q. 7?

12 A. Uh-huh.

13 Q. So was he in second grade?

14 A. Yeah.

15 Q. All right. And --

16 A. He in the first grade.

17 Q. First grade?

18 A. Yes.

19 Q. Okay. So you've got a first-grader that is kind of
20 stranded at school. You're trying to focus and get your
21 son. Is that fair to say?

22 A. Yes.

23 Q. When you got to school, had you heard from Jim?

24 A. No.

25 When I get at school and then the teacher told me

1 that they send the police to my house to check that he is
2 home or not.

3 So at that point my feeling something really,
4 really bad might be happen to him. So I grab Josh right
5 away, "Hey, Josh, let's go home now and to see what your
6 dad doing and what happened to him."

7 So I drove home.

8 Q. And about how far is that drive from school to your
9 home?

10 A. Around 8 minute.

11 Q. And what was that 8 minutes like for you?

12 A. It is like something really bad. And then I'm thinking
13 what I going to do without him, what Josh going to be like
14 without his dad that -- they attach to each other so much
15 and then they love each other so, so much.

16 So I can't imagine if Josh without his dad and
17 then what I going to do because I feel something to me --
18 like the more I drove close to my home, the more my
19 feeling, like my heart pounding so loud, like get out from
20 my body.

21 Q. And did y'all eventually get back home?

22 A. Yes. When I get back home, I turn on the garage; and I
23 saw his car in there. It mean he home.

24 Q. And what did you think when you saw his car?

25 A. I think something bad happen.

1 Q. What did you do next?

2 A. I went upstairs and call him, "Daddy," because -- I call
3 him Daddy because of Josh call him Daddy.

4 So no response, no answer. So I went upstairs to
5 the second floor. I look through his office, and then I
6 saw him just in the chair and just like some -- just like
7 some -- someone sleeping in the -- in the chair.

8 Q. You went upstairs. Where was Josh when you went
9 upstairs?

10 A. He went with me.

11 Q. The two of you went upstairs together?

12 A. Together. We see thing together.

13 Q. Okay. And the jury is going to get to see what the
14 inside of your home looked like later. But just so they
15 get an understanding, it's a two-story home; is that right?

16 A. Right.

17 Q. And so you go in the garage; and you go upstairs and
18 basically you turn the corner, right?

19 A. Right.

20 Q. And as you look into the office, you saw your husband;
21 and it looked like he was sleeping on a chair?

22 A. Right.

23 Q. What did you do then?

24 A. I call him.

25 Q. And did he respond?

1 A. No.

2 Q. What did you do after that?

3 A. Josh pulled me out from that scene. He said, "Mom,
4 let's get out of here. Someone is still here. Let's go
5 get out the house like as soon as we can. So let's get
6 into the car now."

7 So we ran into the car; and I told him, like,
8 before we get out from house, "Can I call 9-1-1"?

9 And then he said, "Yes."

10 So then I call 9-1-1.

11 Q. And did you call 9-1-1?

12 A. Yes, I did.

13 Q. And was that at about 5:22 p.m. on February 19th?

14 A. Yes.

15 Q. And we listened to your 9-1-1 call. I think it was, I
16 don't know, last week or a couple weeks ago. The days kind
17 of go together.

18 We had a chance to review it, correct?

19 A. Yes.

20 Q. The 9-1-1 call that I played for you, was that the call
21 that you made on February 19th?

22 A. Yes.

23 Q. All right.

24 MR. FINE: At this time the government would offer
25 Exhibits 77 and 78, which is the 9-1-1 call and the

1 transcript.

2 MR. SANDEL: No objection, your Honor.

3 THE COURT: Okay. 77 and 78 will be admitted.

4 MR. FINE: Permission to publish Government's 77,
5 your Honor?

6 THE COURT: Yes, you may.

7 (Audiovisual presentation, no tape counter.)

8 THE COURT: Ma'am, would you like to take a break?

9 We're going to go ahead and take a break. Ladies
10 and gentlemen, again, please don't discuss the case among
11 yourself or anyone else. We'll come back here shortly.
12 Thank you.

13 (The jury exits the courtroom, 3:42 p.m.)

14 MR. FINE: May I approach the witness?

15 THE COURT: Yes.

16 Okay. We'll take a few minutes and then come
17 back.

18 (Recess, 3:44 p.m. to 3:49 p.m.)

19 (Open court, defendant present, jury not present.)

20 THE COURT: Ma'am, are you ready to proceed?

21 THE WITNESS: (Moving head up and down.)

22 THE COURT: Let's go ahead and bring the jury in.

23 MR. WHALEN: Mr. Sandel just went to the restroom.

24 THE COURT: Oh, okay -- oh, he's right there.

25 MR. WHALEN: Okay.

1 (The jury enters the courtroom, 3:51 p.m.)

2 THE COURT: Please be seated.

3 Go ahead and continue.

4 MR. FINE: Thank you, your Honor.

5 BY MR. FINE:

6 Q. Dida, you're the same Sakdida Seegan who was on the
7 stand before we took a break, correct?

8 A. Yes.

9 Q. And you know you're still under oath, right?

10 A. Yes.

11 Q. And you're here to tell the jury the truth; is that
12 fair?

13 A. Yes.

14 Q. Okay. After you went upstairs and came back down and
15 called 9-1-1, did you at that point realize that Jim had
16 been shot in the head?

17 A. No, I did not realize that.

18 Q. Did you even see a gun in his hand or anything?

19 A. No.

20 Q. When you walked into that room, was it pretty dark in
21 the room?

22 A. I did not walk to the room. I just look through the
23 door that been opened.

24 Q. Okay. Eventually the police got there, the Carrollton
25 Police Department, right?

1 A. Yes.

2 Q. Paramedics, firefighters, what you would expect in that
3 situation; is that fair?

4 A. Yes.

5 Q. And when did you find out that Jim had died?

6 A. So when all the firemen came, they came upstairs -- I
7 told him, "My husband upstairs. Can you come and take a
8 look?"

9 And 5 minute later, my son Josh was asking, "How
10 is my dad?"

11 And they said like, "Your dad passed."

12 Q. And when they said that to you and Josh, did you at
13 that point know that he had been shot in the head?

14 A. I did not know that.

15 Q. When did you find that out?

16 A. I find out when Detective Duncan --

17 Q. Can you repeat that?

18 A. I not recall when, but maybe 40 minute later or
19 something they came downstairs and I ask him how my husband
20 die.

21 Q. And is that when you found out they said that he was
22 shot in the head?

23 A. Yes.

24 Q. And what was going through your mind when you heard
25 that?

1 A. I said, "Impossible."

2 Q. And why did you say, "Impossible"?

3 A. Because he hated gun. He against gun. He never had
4 gun. And then even I bought toy gun for my son, Josh. He
5 told me, like, "You know that, right? You shouldn't have
6 bring gun, even toy, into the house" and said -- because of
7 his sister die because of gun and then it make him like
8 hate to have gun in the house, even toy.

9 Q. And so Jim told you that he hated guns?

10 A. Yes. He against that.

11 Q. Were there any guns in your home?

12 A. No.

13 Q. Was there any ammunition in your home?

14 A. No.

15 Q. You even said Jim didn't want toy guns in the home?

16 A. No.

17 Q. So you're hearing that Jim was shot in the head. If it
18 wasn't his gun and there weren't any guns in the home, what
19 did you think had happened?

20 A. I have no idea. Even --

21 Q. Did you -- I'm sorry. Go ahead.

22 A. Even like he shot himself, I not even believe that. I
23 didn't have idea where the gun come from.

24 Q. And so let's talk about that.

25 A. Yes.

1 Q. If he had shot himself --

2 A. Yes.

3 Q. -- you have no idea where the gun came from, right?

4 A. Right.

5 Q. He had plans to continue remodeling the house?

6 A. Right.

7 Q. He had plans to return shoes, right?

8 A. Right.

9 And he was to surprise Josh on the day that he got
10 his iPad. So he was planning to surprise him on that day
11 after school.

12 Q. And did -- he had ordered an iPad for Josh, right?

13 A. Yes.

14 Q. Did that iPad arrive that day, on February 19th?

15 A. 18th.

16 Q. The 18th?

17 A. Yes.

18 Q. And tell the jury. What was Jim's plan with that iPad?

19 A. He was planning to surprise him after Josh school and
20 then he gonna play robots together.

21 Q. So he was planning on giving Josh an iPad that
22 afternoon?

23 A. Right.

24 Q. He was planning on returning shoes the next day?

25 A. Yes.

1 Q. Did he ever express any thoughts of killing himself to
2 you at all?

3 A. No. He -- on the 19th he even doing laundry. He clean
4 the kitchen. He do laundry.

5 Q. And when you -- when everything -- I say "settled
6 down." I don't even think that's a fairway to characterize
7 it. But when you were able to take a minute to look
8 around, you mentioned to me something about the Roomba in
9 your --

10 A. Yes.

11 Q. -- in your home, the little --

12 A. Yes.

13 Q. -- robot vacuum.

14 A. Right.

15 Q. Tell the jury about that.

16 A. He still turn on Roomba on that day, too.

17 Q. He had run the Roomba that day?

18 A. Yes, and doing laundry.

19 Q. He was doing laundry that day?

20 A. Yes.

21 Q. And -- let's talk about Jim's thoughts on vaccines.

22 What were his thoughts on vaccines?

23 A. He against that.

24 Q. Was Josh --

25 A. He did not believe in the vaccine, and Josh never had

1 one.

2 Q. Did -- what were his thoughts on medication in general?

3 A. He against that, too. He doesn't believe on that. He
4 says so much chemical, so he just eat something healthy.

5 It's better than take medicine, what he thought.

6 Q. And tell the jury about Jim's lifestyle in terms of how
7 he ate.

8 A. So he ate all organic food, be like free-range chicken;
9 and sometime he order some beef that organic. If they
10 don't have it here, he order from Switzerland or New
11 Zealand. Even for Josh milk, it's from England. Anything
12 the best for health. He just into it.

13 Q. You said he went to the gym?

14 A. He went to the gym. He work out a lot, yeah. He order
15 sauna to do sauna at home after workout. He had what they
16 call vitamin D that turn on at home. So he has everything.

17 Q. Did you ever see him inject himself with any drugs
18 whatsoever?

19 A. Never, ever. He hate that.

20 Q. Was there any evidence in your home whatsoever about
21 any drug use with Jim?

22 A. No.

23 Q. The way that your house is set up with the office and
24 where Jim was found, would it have been easy and it ended
25 up being easy for Josh to have seen his father like that?

1 A. You mean --

2 Q. Bad question. Let me rephrase this again.

3 A. Okay.

4 Q. The office where you found Jim --

5 A. Yes.

6 Q. -- was that easy for Josh to access, to go into?

7 A. Yes.

8 Q. Is that a place where automatically he would run to
9 look for his dad?

10 A. Yes.

11 Q. And you talked about the relationship that Josh and Jim
12 had.

13 A. Yes.

14 Q. Would that make any sense to you that if he were going
15 to kill himself, he would do it in a place where his 6-,
16 7-year-old son would run up and see him?

17 MR. SANDEL: Objection to the speculation, your
18 Honor.

19 THE COURT: Well, go ahead and just rephrase the
20 question.

21 BY MR. FINE:

22 Q. I'm going to rephrase the question.

23 A. Okay.

24 Q. Jim loved Josh, correct?

25 A. Yes.

1 Q. Do you believe, as his wife of 12 years, that he would
2 have wanted Josh to see him dead in that situation?

3 A. I'm not even believe he going to do that to himself,
4 not -- not only Josh can see that, how much he love Josh.
5 I know that.

6 So even impossible that he gonna do that and keep
7 the door open and even not his regular position that he
8 sit. That position, he never sit there before.

9 Q. And let's talk about that. So the way that the office
10 is set up, there's two long desks, right, almost like an L
11 shape?

12 A. Right.

13 Q. And so would Jim normally sit --

14 A. In the --

15 Q. -- under -- under the desk?

16 A. Yes.

17 Q. And so where you found him, was he sitting under the
18 desk?

19 A. No. He is in front of the closet.

20 Q. And had you ever seen him sit in that position before?

21 A. Never.

22 Q. Does it make any sense to you that --

23 A. No.

24 Q. -- he would just be --

25 A. Even Josh said that "My dad never sit here."

1 Q. There was a note that was a typed-up note that was on
2 the desk; is that correct?

3 A. I did not know about a note until the detective gave it
4 to me.

5 Q. And that's what I was going to ask you. Did they --
6 did the detective show you that note?

7 A. Yes.

8 Q. And did that note -- the way that it was written, did
9 it sound like anything Jim would have written at all?

10 A. No, never.

11 Q. Tell the jury why it didn't sound like something he
12 would have written.

13 A. He just like kind of well -- even he email to me, he
14 talk like business talk, like very polite, really like -- I
15 don't know how to describe, but it something different.

16 Because when I see the note, I said that is not
17 him. He never wrote anything like that.

18 Q. And did you tell the police that?

19 A. I told -- I told him that it's not my husband. He
20 never wrote anything like that.

21 Q. When Jim would be in the house, was it his routine to
22 lock the doors?

23 A. Yes.

24 Q. Okay. Because some people if they're in a house by
25 themselves, sometimes people leave the door open. Some

1 people sometimes lock it, and some people don't.

2 Jim always locked the doors?

3 A. Yes.

4 Q. All right. And so if the door was not -- the front
5 door was not locked, that would not be normal for something
6 Jim would do, correct?

7 A. Correct.

8 Q. On the note that the police showed you, was Keith
9 Ashley's name on that note?

10 A. Correct.

11 Q. And did you contact Keith Ashley?

12 A. Police contact him.

13 Q. And did he come over to your house the morning of the
14 20th, February 20th?

15 A. Yes.

16 Q. And what did he come over for?

17 A. The first day, I remember he came for help with
18 cleaning stuff and looked through all the paperwork, like
19 trust and will for my husband.

20 Q. And did he tell you that he would take care of the
21 finances?

22 A. Yes.

23 Q. Did you trust Keith Ashley?

24 A. No.

25 Q. Why not?

1 A. Because I don't know him well. Only my husband know
2 him. Only my husband trust him. It doesn't mean I trust
3 him, right? So I don't trust him.

4 Q. I want you --

5 MR. FINE: Actually, your Honor, permission to
6 publish Government's 68, which has been previously
7 admitted.

8 THE COURT: Go ahead.

9 MR. FINE: And if we could scroll -- I think it's
10 going to be on page 5.

11 No. Let's keep going.

12 It's actually page 4.

13 BY MR. FINE:

14 Q. Dida, do you see that? You're looking at the screen.
15 Are you able to see that?

16 A. Yes.

17 Q. So I'm going to circle a signature here. Is that your
18 signature on Government's 68, page 4?

19 A. No.

20 Q. Did you ever sign that document?

21 A. No.

22 Q. Does this look like a signature that you signed at one
23 time?

24 A. Correct.

25 Q. Tell the jury about that.

1 A. I would sign like this for my U.S. citizen, only one
2 time alone; and I never sign it again.

3 Q. And so this was how you signed for your citizenship
4 paperwork, right?

5 A. That's -- yes.

6 Q. Sort of a flowing, nice, fancy signature, right?

7 A. Yes.

8 Q. Does that look anything like the way that you sign any
9 of your documents now or since you got your citizenship?

10 A. No.

11 Q. And your citizenship paperwork, where was that located
12 in your home?

13 A. In my husband office.

14 Q. And you're telling this jury you did not sign this?

15 A. I did not sign. I did not even see that paper before,
16 until now.

17 Q. After -- well, let me ask you this: Before Jim was
18 shot in the head, did you know much about his will or trust
19 or anything like that?

20 A. I did not.

21 Q. Did Keith Ashley tell you about his will or his trust,
22 your husband's will or trust?

23 A. Before he passed or after?

24 Q. After he passed.

25 A. After, yes.

1 Q. Okay. And what did he tell you?

2 A. He did not tell me everything. He just come for help
3 and then just he brought the trust and will for my husband
4 office and I had no chance to read it, but he go through
5 everything for me.

6 Q. Did you ever know that he was the executor of the
7 trust?

8 A. I did not know until I see the trust and will later.

9 Q. And that signature on Government's 68 was part of two
10 signatures on there, correct?

11 You saw the top signature, which is your
12 husband's?

13 A. Correct.

14 Q. And that document basically changed the beneficiary of
15 a \$2 million life insurance policy to be the trust that
16 Keith Ashley was the executor of. Did you have any idea
17 about that at all?

18 A. I have no idea at all. I not even know that I have --
19 we got 2 millions.

20 Q. Would you have signed a document giving him control
21 over \$2 million coming to you and your son?

22 A. Never, ever.

23 Q. Let's talk about February 21st. Now, you said on the
24 20th he came over, talked a little bit about finances, and
25 helped with the cleanup because --

1 A. Yeah.

2 Q. -- you had to live in that house, unfortunately.

3 A. Right.

4 Q. Let's talk about February 21st. Did Keith Ashley come
5 over again on February 21st?

6 A. Yes.

7 Q. Did he ask you to look at your husband's phone?

8 A. Yes.

9 Q. And tell me. Why did he say he needed to look at your
10 husband's phone?

11 A. I did not recall why he want that. He want some -- to
12 go through something like password, something on my husband
13 phone. I do not recall why he want my husband phone that
14 time.

15 Q. Okay. And did you give him your husband's phone?

16 A. Yes, I did.

17 Q. And was he able to unlock that phone?

18 A. Josh helping.

19 Q. And tell the jury how Josh helped him unlock the phone.

20 A. Before my husband passed -- so he told Josh if
21 something going to happen to him, like he pass out or fall
22 in the floor, something like that, put his like fingerprint
23 or password and call 9-1-1. So he told Josh that. That's
24 why Josh know his password on his phone.

25 Q. And was Josh able to unlock the phone for Keith Ashley?

1 A. Yes.

2 Q. And did you see Keith Ashley do something with the
3 phone?

4 A. Yes.

5 Q. What did you see him do?

6 A. He was asking me did I see his messages between him and
7 Jim.

8 Q. And how did you respond?

9 A. I said, "Yes."

10 Q. And what did he do?

11 A. He deleted.

12 Q. He deleted the text messages between your husband and
13 him?

14 A. Yes.

15 Q. And did he say why he deleted them?

16 A. He said like, "Oh, wow, I deleted."

17 And I said, "It's okay. You can delete on my
18 husband phone; but the rest of the message still in his
19 phone, too."

20 But then he said like he deleted his message every
21 day.

22 Q. So he told you that -- so he took your husband's phone
23 who was shot in the head 48 hours before -- less than 48
24 hours before, had your son unlock the phone?

25 A. Yes.

1 Q. Then deleted text messages off of that phone?

2 A. Yes.

3 Q. And then tried to make it seem like it was an accident?

4 A. Yes.

5 Q. Well, was it an iPhone?

6 A. Not iPhone. Maybe Samsung.

7 Q. Samsung?

8 A. Yeah, something like that.

9 Q. So on a -- I have an iPhone. But on a Samsung -- tell
10 me if I'm wrong on this.

11 When you delete a text message --

12 A. Yes.

13 Q. -- do you know if it still has something where it says
14 "Are you sure you want to delete" or something like that?

15 A. Yes.

16 Q. So it's pretty hard to accidentally delete text
17 messages. Would you agree?

18 A. Yes.

19 Q. Did you find that odd, that he would be erasing text
20 messages between him and your husband who was shot in the
21 head 36 hours before?

22 A. I'm sorry?

23 Q. Did you find that odd? Did you find it strange?

24 A. Yeah, yeah.

25 Q. Did it concern you?

1 A. Yeah. I concern. I concern even the -- the first day
2 so --

3 Q. And let me ask you this: Later on, through the
4 investigation of the Carrollton Police Department, you
5 found out that Keith Ashley took \$20,000 out of a bank
6 account belonging to you and your husband, correct?

7 A. Yeah, belong to my husband from the --

8 Q. And --

9 A. -- bank.

10 Q. -- did you give him permission to take that \$20,000?

11 A. No, I never.

12 Q. Did he ask you for permission?

13 A. No.

14 Q. If he had asked you for permission to take \$20,000 out
15 of that account, would you have given him permission?

16 A. No.

17 Q. How did it feel when you found out that he stole
18 \$20,000 from you?

19 A. I had a shock. I could not believe he done that.

20 Q. And did you later find out not only did he steal
21 \$20,000 from you --

22 MR. SANDEL: Objection to the characterization of
23 "steal," your Honor.

24 MR. FINE: Well, your Honor, if she didn't give
25 permission to take the money and it's taken, that's --

1 THE COURT: Overruled.

2 MR. FINE: Okay. Thank you, your Honor.

3 BY MR. FINE:

4 Q. How did it make you feel not only that he stole \$20,000
5 from you, from your husband's bank account, but it was two
6 days after he was killed? How did that make you feel?

7 A. Really bad.

8 MR. FINE: I'll pass the witness.

9 THE COURT: Cross-examination?

10 MR. SANDEL: Thank you, your Honor.

11 CROSS-EXAMINATION OF SAKDIDA SEEGAN

12 BY MR. SANDEL:

13 Q. Good afternoon, Mrs. Seegan.

14 A. Good afternoon.

15 Q. My name is Ryne Sandel. And you and I have never met
16 before, correct?

17 A. Correct.

18 Q. I represent Keith Ashley in this case; and I just have
19 a few questions for you, okay?

20 A. Yes.

21 Q. And as I ask these questions, if you need me to
22 rephrase them, I'm happy to do that. So just let me know,
23 okay?

24 A. Okay.

25 Q. Now, when you were speaking to Mr. Fine, he asked you

1 about life insurance. Do you remember that?

2 A. Yes.

3 Q. Now, did you know that James had life insurance at all?

4 A. I know he has life insurance.

5 Q. Okay. What did you know about him having life
6 insurance?

7 A. I don't know anything, just that he has life insurance.

8 Q. So you know -- you knew he had it, but you weren't
9 aware of what those details were --

10 A. No.

11 Q. -- is that fair?

12 A. No, I did not know the detail.

13 Q. Okay. Did James ever talk to you about life insurance
14 or what would happen if he were to pass away?

15 A. He used to talk about that like many years ago, and
16 then he never talk about it again.

17 Q. So you didn't know specifically how many life insurance
18 policies James had?

19 A. I did not know.

20 Q. And that's not something that he ever discussed with
21 you, correct?

22 A. No.

23 Q. Did you know what James' net worth was?

24 A. I don't know.

25 Q. Was that ever something that he discussed with you?

1 A. No.

2 Q. Were you aware of what James' monthly income was, how
3 much money he was making?

4 A. I don't know. I don't ask.

5 Q. And that's not something that he ever discussed with
6 you either?

7 A. No. I don't care to ask him.

8 Q. Okay. Now, did you hear anything or did James tell you
9 anything about a trust being created?

10 A. He told me that, but I don't know detail in the trust.

11 Q. When do you remember James telling you that a trust got
12 created?

13 A. We were talking about that on -- on 2019.

14 Q. So in 2019 you remember James speaking to you about him
15 creating a trust?

16 A. Yeah, we both going to a trust, not only him. I do my
17 side, he do on his trust, too.

18 Q. Oh, okay. So you guys had conversations about him
19 creating a trust and then you creating a trust? Is that
20 right?

21 A. Yes.

22 Q. But did you ever create a trust for you?

23 A. I did.

24 Q. You did?

25 A. Yes.

1 Q. Did you do that through a lawyer's office?

2 A. My husband took care everything. I have no idea.

3 Q. So your husband took care of that part?

4 A. Yes.

5 Q. Do you remember meeting a lawyer that came to your
6 house to talk to James about the trust and to sign some
7 documents?

8 A. I do not recall. I know now from you. I have no idea.

9 Q. Okay. So as you sit here, you don't specifically
10 remember that; but it could have happened?

11 A. No.

12 Q. Okay. Which one? Do you think it could have happened
13 and you just don't remember, or do you not think that
14 happened?

15 A. I don't remember.

16 Q. Okay.

17 A. Yeah.

18 Q. And that's fair. That's fine.

19 Were you aware that not only did James create a
20 trust in 2019; but were you aware that he redid his will in
21 2019, in April?

22 A. No.

23 Q. So that's not something that he talked about with you,
24 either?

25 A. No.

1 Q. Now, in terms of bank accounts --

2 A. Yeah.

3 Q. -- do you know how many bank accounts James had?

4 A. I don't know.

5 Q. Do you know where he banked, what his bank was?

6 A. I don't know.

7 Q. Did you have your own bank accounts when you spent
8 money or did James give you a card or how did that work?

9 A. I have my credit card. I use my credit card.

10 Q. You have a credit card?

11 A. Yes.

12 Q. And would James take care of paying that credit card
13 bill?

14 A. Yes.

15 Q. So when you would get paid through your job, would you
16 deposit that money into your account; or did you just give
17 that to James and he took care of it?

18 A. I took in my account.

19 Q. It's in your account?

20 A. Yes.

21 Q. So you have your own bank account, correct?

22 A. Yes.

23 Q. Okay. Now, the credit card that you would use --

24 A. Yes.

25 Q. -- you said that was something that James took care of,

1 right?

2 A. Yes.

3 MR. SANDEL: If we could see Government's
4 Exhibit 68, page 4, please.

5 Thank you, ma'am.

6 BY MR. SANDEL:

7 Q. Mrs. Seegan, do you remember looking at this document
8 with Mr. Fine?

9 A. No.

10 Q. And I don't mean before today. I mean just a few
11 moments ago, do you remember looking at this document --

12 A. Oh, yes --

13 Q. -- when the other lawyer was --

14 A. -- yes.

15 Q. Yes, okay.

16 Now, he drew your attention to where it looks like
17 your name is signed. Do you see that?

18 A. Yes.

19 Q. And do you see a date next to where that signature is?

20 A. Yes.

21 Q. What date is there?

22 A. 24.

23 Q. The 24th of?

24 A. January.

25 Q. January in 2020?

1 A. Yes.

2 MR. SANDEL: If we could see page 5 of that
3 document, please.

4 BY MR. SANDEL:

5 Q. Okay. Now, I know that you say you've never seen this
6 document before, correct?

7 A. Correct.

8 Q. But do you see, right here, a signature that looks like
9 it is that of James?

10 A. No.

11 Q. You don't think that's James' signature there?

12 A. I do not recall. I did not see that.

13 Q. Okay. Now, do you see a date next to that signature,
14 right where I circled in the yellow?

15 A. Yes.

16 Q. And what date is there?

17 A. 23rd January.

18 Q. So that would have been the day before the date on the
19 last page, correct?

20 A. Correct.

21 MR. SANDEL: And if we could go back to page 4.

22 BY MR. SANDEL:

23 Q. Now, Mrs. Seegan, are you familiar with your husband's
24 signature?

25 A. No.

1 Q. Okay. So you don't know, one way or another, if that
2 top signature is James'?

3 A. I do not recall. I do not remember the whole thing --

4 Q. Okay.

5 A. -- of his signature.

6 Q. Now, as far as you know, had James ever signed your
7 name on a document before?

8 A. No. He just asked me easy to sign. I do it right
9 away, no question asked.

10 Q. So normally what would happen is he would bring you
11 something and say, "Hey, please sign this"?

12 A. Yes, but I need to read first --

13 Q. Okay.

14 A. -- before I sign.

15 Q. And if you were ever unavailable, did he ever sign your
16 name for you?

17 A. No. He never.

18 MR. SANDEL: Thank you. You can take that down.
19 Thank you so much.

20 BY MR. SANDEL:

21 Q. Now, you said that James had a brother, Bob; is that
22 right?

23 A. Right.

24 Q. Did Bob pass away?

25 A. Yes, he did.

1 Q. When was that?

2 A. 2019, I believe.

3 Q. In 2019?

4 A. Yeah.

5 Q. And do you recall how Bob died?

6 MR. FINE: Your Honor, I'm going to object to
7 relevance.

8 MR. SANDEL: Can we approach, your Honor?

9 THE COURT: Yes.

10 (Sidebar conference, off the record.)

11 THE COURT: Go ahead and proceed.

12 BY MR. SANDEL:

13 Q. Okay. Mrs. Seegan, I believe that the question I had
14 asked, how did Bob pass away? How did he die?

15 A. He kill himself.

16 Q. Bob committed suicide?

17 A. Yes.

18 Q. And did that have an impact on James?

19 A. I don't think so because he -- he kind of have like
20 depress before, and Jim did know all that so --

21 Q. When you say he had been depressed before, who were you
22 referring to?

23 A. Bob.

24 Q. Bob had been depressed.

25 A. So Jim know the whole time. It not surprise him

1 something happen because he knows the same beginning until
2 the last. So he -- he kind of get ready for that. It
3 doesn't have something like to sudden happen.

4 Q. So fair to say that James may not have been shocked by
5 the suicide; but he was still sad about it, correct?

6 A. Of course. His brother.

7 But he's not, like, sad that he gonna kill himself
8 because of his brother.

9 Q. And you said that Bob had been depressed. Do you know
10 if he had been diagnosed with any mental health issue or
11 just generally depressed?

12 A. I -- what I -- I don't know. What I know, I know
13 really depressed. But other than that, I don't know.

14 Q. Okay. And that's fair.

15 I believe you also said that James had a sister
16 that passed away, correct?

17 A. Correct.

18 Q. And I think what you testified to is she died from a
19 gunshot?

20 A. Yes.

21 Q. When did that happen?

22 A. I did not know. Maybe like since -- I don't know how
23 long but since his -- now his nephew 40. When he was 7
24 years old, that his dad shot her. So it's long, long time
25 ago.

1 Q. Okay. So she was killed by her dad?

2 A. Her husband.

3 Q. Her husband?

4 A. Yes.

5 Q. Okay. And this happened when James was young?

6 A. I think so. I don't know.

7 Q. Okay.

8 A. Just --

9 Q. Now, did James have a friend named Lawrence Ahee?

10 A. Yes.

11 Q. He might have called him Larry. Do you remember that
12 name?

13 A. Yes.

14 Q. Who was Larry?

15 A. Larry his friend that I know. He come to our house
16 often, and I cook him food.

17 Q. Was he a fairly close friend of James?

18 A. Yeah, I think so.

19 Q. Prior to February of 2020, did Larry pass away, too?

20 A. I forgot when he pass.

21 Q. You forgot when he passed?

22 A. Yeah.

23 Q. But at some point Larry passed away, too, correct?

24 A. Yes.

25 Q. Now, one of the things that I believe Mr. Fine asked

1 you was would you sign a document that gave Mr. Ashley
2 control over the money.

3 Do you remember -- do you remember Mr. Fine asking
4 you that?

5 A. Yeah, I remember.

6 Q. And do you remember your answer was, "Never," you would
7 never do that?

8 A. No, I never do that.

9 Q. Do you know how trusts work?

10 A. I don't. I have no idea.

11 Q. Do you know the difference between a trustee and a
12 beneficiary?

13 A. I know the beneficiary, but I don't know the trustee.

14 Q. So you know what a beneficiary is, but you don't know
15 what a trustee does?

16 A. I don't know.

17 Q. And so fair to say when Keith Ashley was designated as
18 a trustee, you weren't sure what that meant, correct?

19 A. Correct.

20 Q. But he did tell you that you were the beneficiary of a
21 policy, right?

22 A. Yes.

23 Q. And what is your understanding of what a beneficiary
24 is?

25 A. Something that I can, you know, get something from my

1 husband.

2 But I do not know how much I gonna get or what in
3 there, in the trust and in the will.

4 Q. Did you ever ask Mr. Ashley for copies of the trust
5 documents?

6 A. My friend asked.

7 Q. Your friend asked?

8 A. Uh-huh (moving head up and down).

9 Q. And were they given to your friend?

10 A. Gave it to me.

11 Q. They gave them to you?

12 A. Yeah, he gave it to me; and I gave to my friend to keep
13 it.

14 Q. And who is "he"? You said, "he gave it to" --

15 A. Keith gave it to me.

16 Q. Mr. Ashley gave it to you?

17 A. Yes.

18 Q. Okay. So when you asked, "Hey, can I see a copy of the
19 trust," Mr. Ashley gave that to you?

20 A. Yes, before he asked me for, yes.

21 Q. Did you ask him any questions about what it meant?

22 A. We have no chance to talk about that yet.

23 Q. You didn't get a chance to talk about that?

24 A. Yes, because I have something more important than that
25 to talk about.

1 Q. Of course.

2 A. So that's why I did not ask.

3 Q. After James died --

4 A. Yes.

5 Q. -- did you go to a lawyer to help figure out all of the
6 probate things and that sort of stuff?

7 A. Yes.

8 Q. What was that lawyer's name? Do you remember?

9 A. I remember his name is Paul, Paul Lieck (phonetic
10 spelling).

11 Q. Paul Lieck?

12 A. Yeah.

13 Q. Okay. And the documents that Mr. Ashley gave you, the
14 trust documents, did you give those to Mr. Lieck?

15 A. Yes.

16 Q. And did he -- did Mr. Lieck explain to you about how
17 that all worked and what that meant?

18 A. Yes.

19 Q. Okay. Now, you said that when Keith came over on the
20 20th, one of the things he said to you was that he would
21 take care of the finances, correct?

22 A. Correct.

23 Q. What was your understanding of what that meant?

24 A. I had no idea. I'm out. I'm lost. I don't know
25 anything so -- I concern only how my husband pass. So I

1 don't care about the financial, so I have no idea.

2 Q. When the \$20,000 was moved, that was done on the Apple
3 computer in James' desk -- in James' office, correct?

4 A. The 20,000?

5 Q. Correct.

6 A. No, not his computer.

7 Q. Where was that done?

8 A. What I believe on that day -- on the second day he
9 passed -- on the second day he came and he left; and then
10 he might do something to go through his bank account and he
11 is gonna send text to my husband phone to have, like, code
12 to go through his account.

13 So I remember my friend asking me -- like Keith
14 asking me to give the password to him through my husband
15 phone. So I check my husband phone, and then I text him
16 back what the code is.

17 Q. Okay. So that back-and-forth of a pass code, you said
18 that was done via text? You texted the pass code to Keith?

19 A. Yeah, I -- I think so. I not recall, but I didn't know
20 what it is. I did not -- I don't -- I have no clue why he
21 need the code, what the code for. I have no idea so --

22 Q. And you've made a couple references to a friend, your
23 friend that --

24 A. Yeah.

25 Q. -- was helping. Who -- what's your friend's name that

1 was helping you through that?

2 A. Satomi.

3 Q. Satomi?

4 A. Yes.

5 Q. Is that her first name or last name?

6 A. Her first name. I forgot her last name. Kind of
7 difficult to pronounce.

8 Q. Okay.

9 A. Japanese name, yes.

10 Q. Can you spell her last name?

11 A. S-A -- S-A-T-O-M-I.

12 Q. So that's Satomi. That's her first name, correct?

13 A. Yes. Yes.

14 Q. What's her last name?

15 A. I forgot.

16 Q. Oh, forgot. Okay.

17 A. Yeah.

18 Q. Does she live in the Dallas area?

19 A. Yes.

20 Q. Where does she live?

21 A. Lewisville.

22 Q. In Lewisville?

23 A. Yes.

24 Q. And so she was with you and helping you through some of
25 this time?

1 A. Yeah. She came even the first day I call her. After I
2 call 9-1-1, I call her.

3 Q. And she's the one that said, "Hey, you need to give
4 this pass code to Keith"?

5 A. She said, like, Keith want me to check on my husband
6 phone to give him the pass code.

7 Q. Okay.

8 A. So I have no idea what a pass code is. We have no idea
9 because he not at home at that time. He was outside.

10 Q. Now, you said that you had suspicions about James'
11 death, correct?

12 A. Correct.

13 Q. And you thought a lot of things about that were weird,
14 right?

15 A. Right.

16 Q. Did you tell all of your concerns to the policemen and
17 the firemen that were there at the scene that day?

18 A. I tell them about -- about -- I don't understand the
19 question. Sorry.

20 Q. Did you tell the police that you were suspicious about
21 the way that James died?

22 A. Of course. I tell them I don't believe my husband die
23 how he shot himself. I don't believe that. I strong
24 disbelieve that what happened to him and everything.

25 Q. And when did you tell the police that information? Was

1 it right away?

2 A. Right away. Once I know that how -- I asked first how
3 my husband die. They said he shot himself. I told them
4 right away that impossible.

5 Q. Okay. And did you tell that to multiple police
6 officers, that you thought something was wrong here?

7 A. Yes.

8 Q. Okay.

9 A. Because I told them about how I feel and how I thought
10 about it.

11 Q. And do you remember the police officers writing that
12 down and taking note of that?

13 A. I did not recall because they have so many.

14 Q. Now, we talked a little bit about James' cell phone,
15 right?

16 A. Yes.

17 Q. When James was in his office, was there a stand where
18 he would set his cell phone that would charge it?

19 A. I'm not sure he has that because so many thing in his
20 office. But he has charger in his office; but I'm not sure
21 about a stand, something.

22 Q. So he's got a phone charger in his office. You just
23 weren't sure if it was a stand-up one or not?

24 A. Yeah, but he has charger.

25 Q. Now, you talked about the text messages that you said

1 Mr. Ashley deleted. Do you remember talking about that?

2 A. Yes.

3 Q. I think what you said -- correct me if I'm wrong -- is
4 that before Mr. Ashley deleted anything, he asked you,
5 "Hey, did you see these text messages," right?

6 A. Correct.

7 Q. Okay. So he asked you, "Did you see this text
8 conversation?"

9 A. He said did you read the text between him and my
10 husband. I said, "Yes, I did."

11 Q. And so you told Keith, "Yes, I saw that and I read it"?

12 A. Yes.

13 Q. Okay. And then at some point did a police officer ask
14 you if they could take James' phone so that they could look
15 at it?

16 A. Yes.

17 Q. And did they take it and keep it with them, or did they
18 just look at it and give it back?

19 A. They keep it then.

20 Q. They kept it with them?

21 A. Yeah.

22 Q. Mrs. Seegan, do you recognize the name Kerby Keller?

23 A. Yes.

24 Q. Who is Kerby Keller?

25 A. My husband nephew.

1 Q. Your husband's nephew?

2 A. Yeah.

3 Q. And what is -- what was James' relationship like with
4 Kerby?

5 A. Uncle.

6 Q. I mean, but was it a close relationship?

7 A. Oh, very close because he been taken care of Kerby a
8 lot and, you know, like become a dad to Kerby also even
9 though they don't live close.

10 Q. Okay. So Kerby and James were very close?

11 A. Very close.

12 Q. Were you aware that Kerby was named as the guardian for
13 Josh in the event that you and James passed away at the
14 same time? Were you --

15 A. Yes. We talk about that.

16 Q. Okay. And when you say "We talked about that," that's
17 something that you and James talked about?

18 A. Yeah. We talk about like if something happen, then
19 Kerby gonna take care of Josh. That's in case something
20 happen at the same time.

21 Q. Right.

22 A. And then Kerby take care of Josh.

23 Q. Do you know if James talked to Kerby about that?

24 A. I think he talk about at -- they have like boy trips
25 together to make them, like, bonding.

1 Q. They had boy trips so that they could bond?

2 A. Yes.

3 Q. Okay.

4 A. And then they planning to do on 2020. They plan to go
5 to Pittsburgh --

6 Q. Okay.

7 A. -- to take Josh to where he came from, to see Kerby
8 family side. They planned to do that before he passed.

9 Q. So that it -- it was not a secret that if something
10 were to have happened to James and you, that Kerby was the
11 one that would have been taking care of Josh, correct?

12 A. Yes, correct.

13 Q. And how soon after James passed did Kerby start helping
14 out with the finances and the lawyers and that sort of
15 thing?

16 A. I think maybe on the weekend. He came on --

17 Q. Pretty shortly after James passed?

18 A. Yeah, not only him decide. We all decide, me, him, and
19 my friends.

20 Q. Okay.

21 A. It's not only him alone.

22 Q. Okay.

23 A. Yes.

24 MR. SANDEL: Pass the witness, your Honor.

25 THE COURT: Additional questions?

1 MR. FINE: Brief, your Honor.

2 REDIRECT EXAMINATION OF SAKDIDA SEEGAN

3 BY MR. FINE:

4 Q. Dida, I forgot to ask you on direct examination. But
5 was Jim right-handed or left-handed?

6 A. Right.

7 Q. Did he ever have any major medical procedures, like a
8 few days before he was shot?

9 A. No.

10 Q. Nothing where he would have been put under sedation or
11 major surgeries or anything like that?

12 A. No.

13 Q. Did Keith Ashley ever tell you that the life
14 insurance -- or one of the life insurance policies was
15 worth \$2 million?

16 A. No.

17 Q. Did he ever give you any specifics on the amount of
18 money that you and Josh were looking at as beneficiaries?

19 A. What I remember he wrote in the yellow paper on the
20 first day he came. What I remember, he said like I would
21 get 3.5 million, not -- not yet. It still have more to
22 come. Just only this amount first, for now.

23 Q. And did he tell you at the time that he was the
24 executor or in charge of those financial decisions?

25 A. No. I did not know.

1 Q. Did he give you the documents about the trust right
2 away?

3 A. No.

4 My friend ask him. Then he gave it to my friend.
5 I did not see through what in the paper; but I know that
6 trust, will.

7 Q. So it wasn't until your friend mentioned a couple
8 things that then he provided the documents?

9 A. Right, because my friend asking him did I have that;
10 and then he said, "No."

11 And then she said, "Why don't you just give it to
12 her?"

13 And then he gave it to me.

14 Q. And were you aware when he resigned as executor of the
15 trust? Do you know when that happened?

16 A. I did not know.

17 Q. Okay. You said that you gave Jim's cell phone to the
18 Carrollton Police Department so that they could take a look
19 at it; is that correct?

20 A. Yes. Yes.

21 Q. And did you ever get it back from them?

22 A. I do not recall because they want it and then -- I'm
23 not recall it if they are giving it back to me or not in
24 that time, but I just gave it to them.

25 Q. Okay. But you gave them consent to do whatever they

1 needed with the cell phone, correct?

2 A. Exactly, yes.

3 MR. FINE: We'll offer Government's 91A and 91B at
4 this time, which is James Seegan's cell phone extraction
5 and report.

6 MR. SANDEL: At this time we would object under
7 authentication and predicate purposes.

8 THE COURT: Response?

9 BY MR. FINE:

10 Q. Dida, do you -- what did Carrollton Police Department
11 ask for the cell phone; what did they want to do with it?

12 A. They don't tell me.

13 Q. Okay.

14 A. Because when I go there, they said like -- they asking
15 for my husband phone, and I gave to them.

16 MR. FINE: That's fine, your Honor. We'll get it
17 in with another witness.

18 THE COURT: Okay.

19 MR. FINE: I'll pass the witness.

20 THE COURT: Anything additional?

21 RE CROSS-EXAMINATION OF SAKDIDA SEEGAN

22 BY MR. SANDEL:

23 Q. So, Mrs. Seegan, I believe what you just testified to
24 was at some point Mr. Ashley comes over and writes on a
25 piece of yellow paper --

1 A. Yes.

2 Q. -- how much money you'd be getting?

3 A. Yes.

4 Q. And what you said was he said you're going to be
5 getting about \$3.5 million?

6 A. Yeah, for now.

7 Q. For now?

8 A. For now. Still have more, not as of yet.

9 Q. Okay. And you talked about the trust documents and
10 that Mr. Ashley gave them to your friend.

11 A. Gave it to me.

12 Q. Gave them to you after your friend asked him, correct?

13 A. Yes.

14 Q. Did he ever tell you, "No, you can't have these"; or
15 did he just give them to you when he was asked?

16 A. Yeah, he gave it to me.

17 Q. Thank you very much. I really appreciate your time.

18 MR. SANDEL: Nothing further, your Honor.

19 THE COURT: Anything else?

20 MR. FINE: No, your Honor.

21 THE COURT: Can this witness be fully excused?

22 MR. FINE: Yes, your Honor.

23 MR. SANDEL: Yes, your Honor.

24 MR. FINE: Subject to recall, but yes.

25 THE COURT: Okay. Well, that's not fully excused,

1 then. So she's subject to recall?

2 MR. FINE: We can let her go, your Honor.

3 MR. SANDEL: I'm fine with that, your Honor.

4 THE COURT: Okay. Ma'am, you are free to leave.

5 Thank you. You can step down.

6 THE WITNESS: Thank you so much.

7 THE COURT: What's next?

8 MS. RATTAN: We have one short witness, your
9 Honor, with the Court's permission. We'd call Brett
10 Leatherman.

11 THE COURT: Sir, if you'll raise your right hand
12 and be sworn in.

13 (The oath is administered to the witness.)

14 MR. WHALEN: May we approach, your Honor?

15 THE COURT: Yes.

16 (Sidebar conference, off the record.)

17 (The following proceedings were conducted at
18 sidebar with all parties represented.)

19 MR. WHALEN: Your Honor, Agent Leatherman is being
20 taken out of order. I have agreed to that, that his
21 testimony be offered conditionally because he is going to
22 testify about things that are not in evidence and it be
23 conditional until they offer those and make it relevant.
24 So with that stipulation, we're allowing him to go on now.

25 THE COURT: Okay. That's fine.

1 Ms. Rattan, do you want to just confirm that?

2 MS. RATTAN: Yes, your Honor. That's an agreement
3 we have. Thank you.

4 THE COURT: Okay. Very good. That's fine.

5 (Sidebar conference concluded.)

6 THE COURT: Go ahead and proceed.

7 MS. RATTAN: Thank you, your Honor.

8 DIRECT EXAMINATION OF BRETT LEATHERMAN

9 CALLED ON BEHALF OF THE GOVERNMENT

10 BY MS. RATTAN:

11 Q. Please state your name.

12 A. Brett Leatherman.

13 Q. And would you spell your name, please.

14 A. Yes. B-R-E-T-T L-E-A-T-H-E-R-M-A-N.

15 Q. And where do you work?

16 A. The Federal Bureau of Investigation, Dallas Division.

17 Q. And what do you do with the FBI?

18 A. I'm currently the assistant special agent in charge for
19 national security.

20 Q. How long have you been with the FBI?

21 A. Over 19 years.

22 Q. And can you give us an idea of what sort of positions
23 you've held, what types of investigations you've done with
24 the FBI?

25 A. My current role is to oversee FBI Dallas

1 counterterrorism and special operations throughout North
2 Texas.

3 Just prior to this, I was the assistant special
4 agent in charge also over our counterintelligence and cyber
5 national security missions.

6 Prior to this job, I was the cyber national
7 security supervisory special agent, so managing cyber
8 operational work related to nation state threats
9 throughout -- throughout north connection.

10 Most of my FBI career has been either working
11 criminal investigations related to white-collar crime,
12 public corruption, child exploitation, or working in our
13 cyber mission set, which includes both criminal and
14 state-sponsored cyber work.

15 Q. And what's your educational background?

16 A. I graduated with an undergrad degree in business
17 administration and computer information systems and then a
18 graduate degree from Georgetown University this year in
19 cybersecurity risk management.

20 Q. And can you describe for the jury your experience and
21 your skills with cell phone analysis?

22 A. Yeah. So I have several certifications, some of which
23 include information systems. A cell phone is, in essence,
24 part of an information system. It, in and of itself, is an
25 information system. It's an endpoint that's unique. It's

1 similar to laptop servers, a similar kind of device.

2 So I have a CISSP certification, which is
3 certified information systems security professional; GIP,
4 which is GIAC certified information security professional;
5 and then a GI -- GCIH, which is GIAC certified
6 information -- incident handler, which is really doing
7 incident response and learning PIN testing, adversarial
8 techniques against information systems, working more at the
9 operating system level.

10 So whether it's laptops, servers, desktops, cell
11 phones, it's really understanding what is on the operating
12 system, how the operating systems work, how applications
13 work within those operating systems.

14 Part of that over the 19 years has involved doing
15 analysis of cell phones, desktop computers, laptop
16 computers in cyber investigations, you know, criminal
17 investigations, and similar.

18 Q. Can you explain how a cell phone can be exploited
19 investigatively? What would be the first step? What would
20 you do?

21 A. Yeah. So a cell phone can be analyzed in a couple
22 different ways.

23 In one case, depending on an investigator's
24 capability and what the threat is, you can do a physical
25 manual analysis of the cell phone, which is where you

1 actually physically go through the cell phone, try to take
2 photographs or, you know, document evidence from it doing a
3 manual review.

4 Forensically you can do a review in a number of
5 different ways. You can do a full file system extraction
6 through Cellebrite or a similar tool. You can do memory
7 dumps and memory analysis. And then you take the artifacts
8 from that, and you analyze it away from the device itself.

9 Q. You mentioned Cellebrite. What is that? You said it's
10 a tool, an investigative tool to use with a phone. Will
11 you explain that?

12 A. Yeah. So you can connect a cell phone to a Cellebrite
13 or similar -- GrayKey-similar software and hardware-based
14 infrastructure, extract data from that to a hard drive or
15 to another physical medium. That way you can analyze a
16 logical dump or physical dump of the operating system and
17 all its contents away from the device itself.

18 Q. And were you asked in this case to review a Cellebrite
19 download of the victim's phone, James Seegan's phone?

20 A. I was.

21 Q. And what analysis did you do on the victim James
22 Seegan's phone?

23 A. So in this case I analyzed Apple Health data.

24 It was an Apple iPhone running an iOS operating
25 system. Within the iOS operating system, Apple installs an

1 application called Health; and that tracks certain metrics.

2 Q. And what were you looking for? What were you
3 evaluating on the victim's phone?

4 A. Basically physical -- physical manifestations of data.

5 So in this case it was similar to what you would
6 see as a pedometer. Basically, Apple Health will allow you
7 to track steps, flights climbed, so physical
8 characteristics of what may have been occurring on a
9 certain date and time period.

10 Q. And did you look at James Seegan's phone and the
11 Cellebrite download to determine when the last step was
12 logged on James Seegan's phone on February 19th of 2020?

13 A. I did.

14 Q. And will you tell the jury what your evaluation was and
15 what you concluded?

16 A. Yeah. So the iPhone itself measures step and flights
17 climbed data based on a gyroscope and an accelerometer.
18 Basically, it takes what Apple has programmed in as what
19 would be constituted as human step data or flights climbed
20 data; and it logs it to the Apple Health app.

21 It can also do that using external media like an
22 Apple Watch, for example. So within that logging it will
23 tell you where that data came from, whether it came from
24 the phone, an external device.

25 In this case the review showed that the steps and

1 the flights climbed came from the cell phone itself, and it
2 showed a variety of steps on the date in question as well
3 as flights climbed that day.

4 Q. So on the date in question, February 19th of
5 2021 (*sic*), it showed that there was movement or steps
6 logged; is that right?

7 A. Correct.

8 Q. And did you look at the phone and evaluate when that
9 movement stopped to determine when the last step logged by
10 James Seegan was according to his phone?

11 A. I did.

12 Q. And what were you able to determine?

13 A. I don't have the log file in front of me. Is it in the
14 exhibits by chance?

15 Q. Yes. It's 91B.

16 MS. RATTAN: May I approach the witness, your
17 Honor?

18 THE COURT: Yes, you may.

19 A. Do you want me to go ahead and answer?

20 BY MS. RATTAN:

21 Q. Uh-huh.

22 A. Okay. So the last step recorded in --

23 MR. WHALEN: Your Honor, I'm going to object to
24 him reading from a document not in evidence and --

25 THE COURT: Ms. Rattan?

1 MR. WHALEN: If it's admitted conditionally with
2 that limitation, I'm going to object to him reading from
3 something not in evidence.

4 MS. RATTAN: May I be heard?

5 THE COURT: Yes.

6 MS. RATTAN: A couple of things. We can
7 conditionally offer Government's 91B, or the witness can
8 certainly use it to refresh his memory for his testimony.

9 THE COURT: Well, which would you prefer?

10 MS. RATTAN: We'll offer it conditionally.

11 THE COURT: Well, I'll conditionally admit it. I
12 understand it will be proven up later, or it has to be
13 so -- okay. Go ahead.

14 A. And I do recall these conversations in preparation for
15 this. But it was 9:32 a.m., that morning.

16 BY MS. RATTAN:

17 Q. Okay. So at 9:32 a.m. what happened?

18 A. So at 9:32 a.m. the iPhone stopped recording the last
19 set of steps that had occurred that morning. That was the
20 last identified steps during the morning.

21 There was also -- I'm sorry. At approximately
22 9:33 a.m. would have been the last steps.

23 9:32 a.m. was the point at which it stopped
24 recording an elevation increase, so going up a flight of
25 stairs.

1 So 9:32, simultaneous to the time frame by which
2 an individual was walking, the individual was both walking
3 and going up steps.

4 And then at 9:33 a.m. it stopped recording steps
5 at that point.

6 Q. Okay. So at 9:32 was the last elevated movement, as if
7 someone were walking upstairs; is that right?

8 A. Correct.

9 Q. Okay. And then at 9:33, that was the last logged step
10 or the last, I guess, movement? How would you phrase that?

11 A. That would have been the last indication that the
12 iPhone recorded an actual physical step being taken.

13 MS. RATTAN: May I approach the witness, your
14 Honor?

15 THE COURT: Yes.

16 BY MS. RATTAN:

17 Q. Let me show you this and ask you if that accurately
18 reflects your testimony from here to here.

19 A. It does.

20 Q. And that is that on February 19th of 2020 at
21 9:33:41 a.m., the last step was logged on James Seegan's
22 phone?

23 A. Correct.

24 Q. And that would be immediately after logging going up or
25 stepping --

1 A. That's correct.

2 Q. Okay.

3 MS. RATTAN: I'll pass the witness, your Honor.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION OF BRETT LEATHERMAN

6 BY MR. WHALEN:

7 Q. Agent Leatherman, how are you?

8 A. Good afternoon. I'm well. Thank you.

9 Q. It's been awhile. Good to see you.

10 A. Good to see you.

11 Q. As far as when you -- you looked at the Cellebrite
12 records; is that correct?

13 A. Correct.

14 Q. Okay. Did you do anything to verify whether the
15 extraction was done correctly so you knew the data that you
16 were reviewing was reliable and accurate?

17 A. No. I was relying on the data as provided to me by
18 Special Agent Rennie.

19 Q. Okay. So when it -- and so you only looked at the
20 health data; is that correct?

21 A. Correct.

22 Q. Okay. And is that -- if you don't have an Apple
23 Watch -- the phone itself is predicated on the idea that
24 it's on your person, correct?

25 A. That's correct, unless you have another device

1 connected to it.

2 In this case it was the actual device that was
3 recording the events, so you would have had that on your
4 person.

5 Q. Okay. So if I take my phone, my iPhone, and don't have
6 an Apple Watch and place it on a table and leave it there,
7 it is not going to record steps or elevation or anything
8 like that; is that correct?

9 A. Correct.

10 Q. Okay.

11 MR. WHALEN: I'll pass the witness.

12 THE COURT: Anything additional?

13 MS. RATTAN: No, your Honor.

14 THE COURT: Can this witness be fully excused?

15 MS. RATTAN: Yes, please.

16 THE COURT: Mr. Whalen?

17 MR. WHALEN: Yes, he can be excused.

18 THE COURT: You are free to leave. Thank you.

19 And at this time we'll go ahead and stop for the
20 day. Again, ladies and gentlemen, please don't discuss the
21 case among yourself or anyone else. Don't do any outside
22 research, and we'll just start back tomorrow --

23 Is 9:00 still --

24 MS. RATTAN: Yes, your Honor.

25 MR. WHALEN: Yes, your Honor.

1 THE COURT: We'll start back at 9:00 in the
2 morning, so just be here right before that. And I will
3 make you something tonight so -- I promise that, so I'll do
4 that tonight.

5 So have a good evening and safe drive home.

6 (The jury exits the courtroom, 4:57 p.m.)

7 THE COURT: Anything further from the government?

8 MS. RATTAN: No, your Honor.

9 THE COURT: Anything further from defense?

10 MR. WHALEN: No, your Honor.

11 THE COURT: Very well. See y'all tomorrow morning
12 at 9:00.

13 (Proceedings adjourned, 4:58 p.m.)

14 COURT REPORTER'S CERTIFICATION

15 I HEREBY CERTIFY THAT ON THIS DATE, OCTOBER 29,
16 2022, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD
17 OF PROCEEDINGS.

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19 /s/
20 CHRISTINA L. BICKHAM, CRR, RDR

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